

3-15-91

Vol. 56

No. 51

federal register

Friday
March 15, 1991

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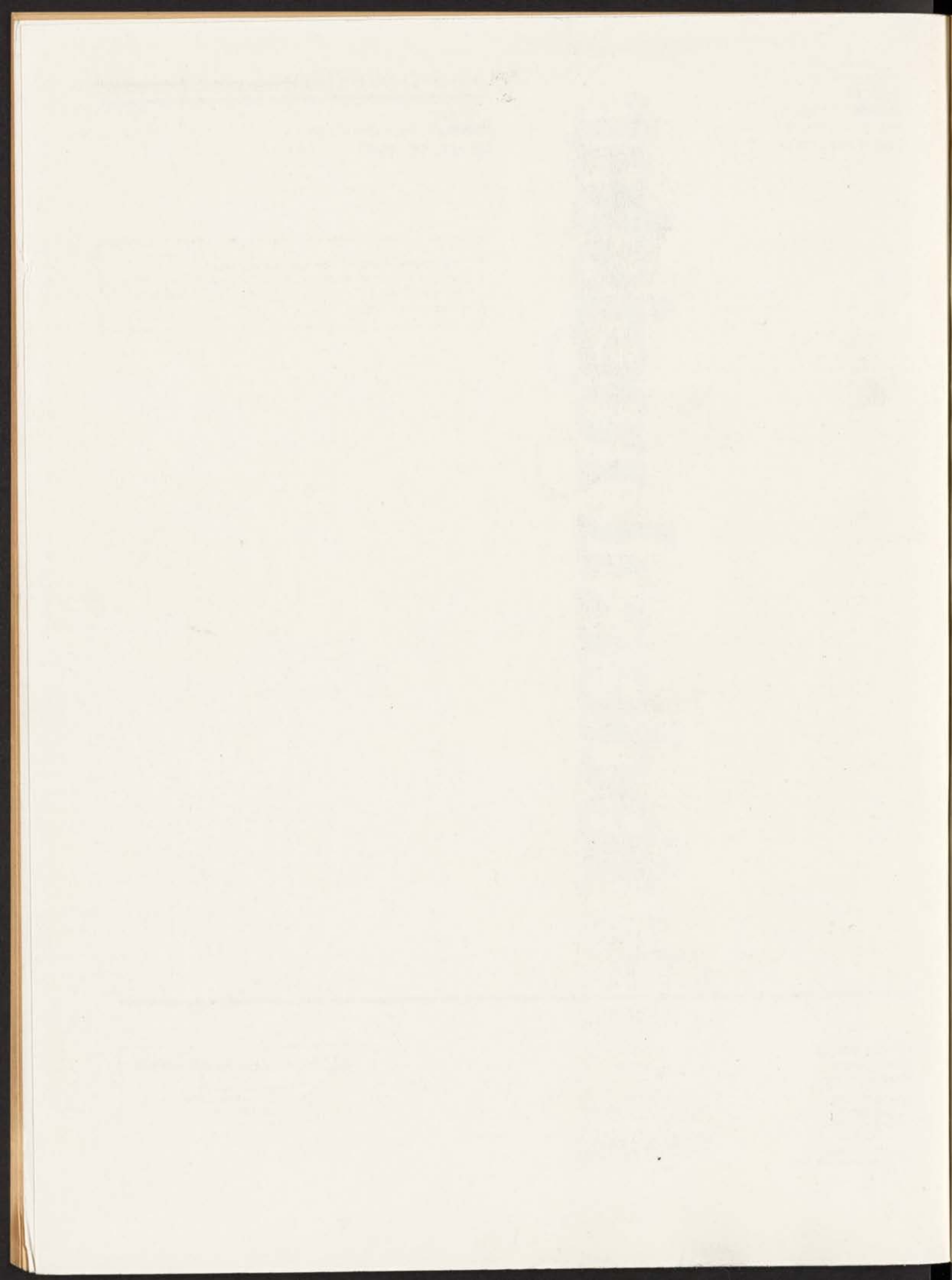
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(ISSN 0097-6326)



3-15-91

Vol. 56 No. 51

Pages 11053-11346

Friday
March 15, 1991

Federal Register

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** March 28, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

MIAMI, FL

- WHEN:** April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
- WHERE:** 51 Southwest First Avenue
Room 914
Miami, FL
- RESERVATIONS:** 1-800-347-1997

CHICAGO, IL

- WHEN:** April 25, at 9:00 am
- WHERE:** 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
- RESERVATIONS:** 1-800-366-2998

WASHINGTON, DC

- WHEN:** May 23, at 9:00 am
- WHERE:** Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
- RESERVATIONS:** 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Title 3—

The President

Proclamation 6259 of March 12, 1991

Irish-American Heritage Month, 1991

By the President of the United States of America

A Proclamation

Each ethnic group in America has made unique contributions to the ever-unfolding story of the United States. This month, as we celebrate the life of Saint Patrick, the beloved Apostle of Ireland, we also celebrate the hardy character, the rich cultural heritage, and the many valuable contributions of Irish-Americans.

By 1776, the year that opened the first chapter in the dramatic history of our Republic, some 300,000 Irish citizens had emigrated to the United States. Many of these courageous individuals played crucial roles in America's War for Independence. Indeed, nine of the men who signed the Declaration of Independence were of Irish origin, as was Commodore John Barry, the first naval commander commissioned by the Continental Congress. Irish-Americans serving in a division of George Washington's forces known as the Pennsylvania Line were so impressive, they moved General Henry Lee to note that it "might with more propriety had been called the Line of Ireland."

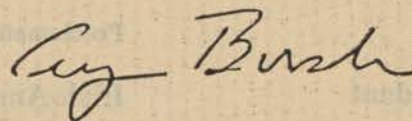
Since Irish-Americans not only helped to win America's Independence but also helped to fashion a system of government for our young Nation, it seems fitting that an Irish-born architect, James Hoban, designed the White House and assisted in the building of the United States Capitol. These magnificent structures have symbolized freedom and democracy to generations of men and women around the world.

Today the distinct "Line of Ireland" can still be traced throughout American culture. American literature, for example, has been greatly enriched by the contributions of gifted Irish-American writers such as Eugene O'Neill and Edwin O'Connor. Throughout the arts—and throughout education, government, business, science, and agriculture—talented men and women of Irish descent continue to merit the honor we give to them and to their ancestors. Indeed, in recent years, renewed immigration from Ireland and the revival of interest by all Americans in their roots have led to an increasingly vibrant Irish-American culture. The dramatic expansion of university courses in Irish studies and the countless annual Saint Patrick's Day parades held throughout the United States all attest to the continued vigor of the Irish-American heritage.

In tribute to all Irish-Americans, the Congress, by Public Law 101-418, has designated March 1991 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 1991 as Irish-American Heritage Month. I encourage all Americans to learn more about the contributions Irish-Americans have made to our country and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-6399

Filed 3-13-91; 2:24 pm]

Billing code 3195-01-M

Presidential Documents

Executive Order 12754 of March 12, 1991

Establishing the Southwest Asia Service Medal

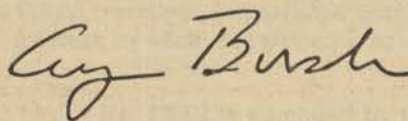
By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. There is established, with suitable appurtenances, the Southwest Asia Service Medal. It may be awarded to members of the Armed Forces of the United States who participated in military operations in Southwest Asia or in the surrounding contiguous waters or air space on or after August 2, 1990, and before a terminal date to be prescribed by the Secretary of Defense.

Sec. 2. The Southwest Asia Service Medal may be awarded posthumously to any person covered by, and under the circumstances described in, section 1 of this order.

Sec. 3. The Secretaries of the Military Departments, with the approval of the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are directed to prescribe uniform regulations governing the award and wearing of the Southwest Asia Service Medal.

THE WHITE HOUSE.
March 12, 1991.



[FR Doc. 91-6349

Filed 3-13-91; 11:00 am]

Billing code 3195-01-M

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Presidential Documents

Executive Order 12755 of March 12, 1991

Administration of Export Controls

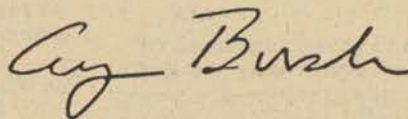
By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), and in order to amend Executive Order No. 12002, it is hereby ordered as follows:

Section 1. Section 3 of Executive Order No. 12002 is amended to read as follows: "The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory and policy-making authorities. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration."

Sec. 2. Section 4 of Executive Order No. 12002 is amended by adding in the third sentence between "national security," and "and the domestic economy," the words "concerns about the nonproliferation of armaments,".

Sec. 3. This order shall take effect immediately.

THE WHITE HOUSE,
March 12, 1991.



[FR Doc. 91-0350

Filed 3-13-91; 11:01 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550 and 551

RIN 3206-AE29

Pay Administration (General); Premium Pay for Emergency Work

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and the special biweekly limitation on premium pay for certain law enforcement officers authorized by section 410 of FEPCA. Section 410 of FEPCA became effective on November 5, 1990.

DATES: Section 204 of FEPCA and the interim regulations set forth below are effective on the first day of the first pay period beginning on or after March 15, 1991. Comments must be submitted on or before May 14, 1991.

ADDRESSES: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 204 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 1990) provides that employees not covered by the special limitation in section 410 (discussed below) who perform certain types of emergency work will no longer be

subject to the GS-15 step 10, biweekly maximum earnings limitation under 5 U.S.C. 5547(a), but will instead be subject to a GS-15, step 10, annual limitation during the period of time they perform the specified types of work. The interim rule provides that heads of agencies or their designees may apply the exception from the biweekly limitation to employees performing emergency work in connection with natural disasters posing a direct threat to human life or property without obtaining OPM approval. In addition, with OPM approval, heads of agencies may apply the exception from the biweekly limitation to employees performing work in connection with other conditions posing a direct threat to human life or property. In both cases, this exception applies only if the work performed by the employee is directly related to resolving or coping with the emergency or its immediate aftermath.

Under the interim rule, employees covered by 5 U.S.C. 5547(b) remain subject to the annual limitation on premium pay throughout the calendar year. This means that an employee may reach the annual limitation even though he or she has not reached the biweekly limitation for a particular pay period. For example, an employee might reach the annual limitation (and therefore be ineligible to receive additional premium pay) if he or she earned large amounts of premium pay while performing emergency work earlier in a calendar year (and therefore was not subject to the biweekly limitation for that time period) and subsequently continues to perform work normally compensable at premium rates.

Section 410 of Public Law 101-509 and the interim rule provide a special biweekly maximum earnings limitation for certain law enforcement officers equal to the lesser of (1) 150 percent of the minimum rate for GS-15, including any locality-based comparability payment or interim geographic adjustment and any special salary rate, rounded to the nearest whole cent, or (2) the rate payable for level V of the Executive Schedule. By statute, this special biweekly limitation became effective on the date of enactment—i.e., November 5, 1990.

Finally, the interim regulations contain a conforming amendment in part 551 of title 5, Code of Federal Regulations.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived to give affected employees the benefit of these new premium pay provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Government employees, wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending parts 550 and 551 of title 5 of the Code of Federal Regulations as follows:

PART 550—PREMIUM PAY

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c).

§ 550.103 [Amended].

2. In § 550.103, a new paragraph (r) is added to read as follows:

* * * * *

(r) *Emergency* means a natural disaster or other temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

* * * * *

3. Section 550.105 is revised and §§ 550.106 and 550.107 are added following the undesignated center heading to read as follows:

Maximum Earnings Limitations

§ 550.105 Biweekly maximum earnings limitation.

(a) Except as provided in paragraph (b) of this section, an employee may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period

to exceed the maximum rate for GS-15, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(b) This section does not apply to—

(1) Any pay period for which an exception has been authorized under § 550.106 (a) or (b) of this part;

(2) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(3) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

§ 550.106 Annual maximum earnings limitation for work in connection with an emergency.

(a) For any pay period in which an employee performs work in connection with an emergency involving a natural disaster, including a forest wildfire emergency, the head of an agency or his or her designee may authorize payment of premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) of this part.

(b) For any pay period in which an employee performs work in connection with an emergency other than a natural disaster, the Office of Personnel Management, on its own motion or at the request of the head of an agency, may authorize payment of premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) of this part. A request made under this paragraph shall be submitted within 30 days after the first day of the first pay period beginning on or after March 15, 1991 or the beginning of the emergency, whichever is later.

(c) In any calendar year for which an exception has been authorized under paragraphs (a) or (b) of this section for any period of time, an employee may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the maximum rate for GS-15 in effect on the last day of the calendar year, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(d) For the purpose of applying paragraphs (a) and (b) of this section, an employee shall be considered to be performing work in connection with an emergency only if the work is directly related to resolving or coping with the emergency or its immediate aftermath.

(e) This section does not apply to—

(1) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(2) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

§ 550.107 Special maximum earnings limitation for law enforcement officers.

A law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code, may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period to exceed the lesser of—

(a) 150 percent of the minimum rate for GS-15, including a locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

(b) The rate payable for level V of the Executive Schedule.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

4. The authority citation for part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93-259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

§ 551.501 [Amended]

5. In § 551.501, paragraph (c) is revised to read as follows:

(c) The maximum earnings limitations described in §§ 550.105, 550.106, and 550.107 of this chapter do not apply to overtime pay due the employee under this subpart.

[FR Doc. 91-6197 Filed 3-14-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 329

[INS Number: 1404-91]

Special Classes of Persons Who May Be Naturalized; Veterans of the United States Armed Forces Who Served During World War I or World War II or Enlisted Under Act of June 30, 1950 as Amended.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule is necessary to implement section 405 of the Immigration Act of 1990 (Pub. L. 101-649) to allow for the naturalization of natives of the Philippines, based upon certain active-duty military service during World War II, who would not otherwise be eligible for naturalization. Approximately 50,000 persons will be eligible for naturalization as a result of the implementation of this regulation.

DATES: Effective March 15, 1991.

Comments must be submitted on or before April 15, 1991.

ADDRESSES: Written comments should be submitted in triplicate to Director, Policy Directives, and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536. Include INS number 1404-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, Telephone: (202) 514-3946.

SUPPLEMENTARY INFORMATION: Section 405 of the Immigration Act of 1990 (Pub. L. 101-649) provided for the naturalization of certain natives of the Philippines based upon certain active duty military service during World War II. Public Law 101-649 provides that those persons with qualifying service may naturalize as citizens of the United States without having been lawfully admitted to the United States for permanent residence or having enlisted within the United States or other qualifying area as required by section 329 of the Immigration and Nationality Act of 1952 ("the Act"). Section 405 also waives the requirement that the applicant must intend to reside in the United States after naturalization, allowing the newly naturalized citizens

to return to the Philippines to reside after naturalization. Other than these exemptions, the applicants are required to comply with all other requirements of naturalization under section 329 of the Act.

The majority of the potential applicants under this section reside outside the United States and many do not have residences established in the United States. Therefore, it will be necessary to provide a mechanism whereby the applicants will have sufficient time to make travel arrangements to the United States for the examination on the application and for the Service to ensure that an applicant who wishes to return abroad after naturalization may do so without undue delay. For this purpose, a centralized processing center for those applications submitted by persons residing outside the United States has been established at the Northern Service Center, Lincoln, Nebraska for submission and initial processing of applications submitted by persons outside the United States. The location of the interview site will be determined at a future date.

Section 405 requires that an alien seeking naturalization under that provision must file an application "during the 2 year period beginning on the date of the enactment of" the Immigration Act of 1990. November 29, 1990, is the date of enactment. Applications for naturalization will, therefore, be accepted between November 29, 1990, and November 30, 1992 (since November 28, 1992 will be a Saturday). Under section 408 of the Immigration Act of 1990, however, the authority to naturalize these aliens does not become effective until May 1, 1991. Accordingly, the Service will accept applications before May 1, 1991, but will make no decision to grant or deny an application before May 1, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule defined in Section 1(b) of E.O. 12962, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

In accordance with 5 U.S.C. 553(d) the Commissioner finds that good cause exists for dispensing with the period of notice and public comment ordinarily required before the promulgation of regulations. The application period for

benefits under section 405 began on November 29, 1990. Regulations are needed immediately, to permit aliens affected by section 405 to have ample time to seek its benefits. For the same reason, the Commissioner finds that good cause exists for having this regulation take effect immediately upon publication in the Federal Register, rather than observing the usual 30 day delay.

Lists of Subjects in 8 CFR Part 329

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements, Veterans.

Accordingly, part 329 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

1. The heading of part 329 is revised to read as set forth above.
2. The authority citation for part 329 is revised to read as follows:

Authority: 66 Stat. 173, 250, 270; 8 U.S.C. 1103, 1440 and note, 1443.

3. §§ 329.3–329.4 [Reserved].
4. A new § 329.5 is added to read as follows:

§ 329.5 Natives of the Philippines with active duty service during World War II.

(a) A person desiring to naturalize in accordance with section 405 of the Immigration Act of 1990 shall establish that he/she:

- (1) Was born in the Philippines;
- (2) Served honorably at any time during the period beginning September 1, 1939, and ending December 31, 1946—
 - (i) In an active-duty status under the command of the United States Armed Forces in the Far East, or
 - (ii) Within the Commonwealth Army of the Philippines, the Philippine Scouts, or recognized guerrilla units; and
- (3) Resided in the Philippines prior to the service described in paragraph (a)(2) of this section.

(b) An application under this section shall be submitted in compliance with § 329.2. In addition to the forms and documentation required in § 329.2 and the appropriate fee as required in § 103.7 of this chapter, an applicant shall submit:

- (1) Proof of birth in the Philippines;
- (2) Police clearance for any place of

residence for more than six months in the previous 5 years if such residence was not in the United States; and

(3) Proof of identity.

(c) If the applicant is residing in the United States, the application shall be submitted to the district or sub-office of the Service having jurisdiction over the place of residence in accordance with §§ 100.4 (b) and (c) of this chapter. A person residing outside the United States shall submit the application to the Northern Service Center, 100 Centennial Mall North, room B26, Lincoln, Nebraska 68509.

(d) A person residing outside the United States shall be examined on his application at a location in the United States designated by the Service. Any person residing outside the United States who wishes to be examined on his application at a location in the United States other than that designated by the Service shall submit with the application a statement as to the desired location and the reasons therefor. The Service may interview the applicant at other than the designated site for good cause. The Service Center Director will determine whether good cause exists and there shall be no appeal from the determination.

(e) To be considered an application for naturalization under section 405, the application must be received by the Service no earlier than November 29, 1990 and no later than November 30, 1992.

(f) No decision to approve or deny an application for naturalization under section 405 of the Immigration Act of 1990 may be made prior to May 1, 1991.

Dated: January 28, 1991.

Gene McNary,
Commissioner.

[FR Doc. 91-5998 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91-029]

Chickens Affected by Salmonella Enteritidis; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In a final rule published in

the **Federal Register** and effective on January 30, 1991 (56 FR 3730-3743, Docket No. 90-134), we amended our regulations in 9 CFR part 82 concerning avian and poultry diseases by adding regulatory requirements to help control the spread of *Salmonella enteritidis* serotype *enteritidis* (SE) in egg-type chicken breeding flocks, and to help control the spread of SE in egg production flocks. Due to an accidental omission, the phrase "egg transport machinery" was not added to two paragraphs in 9 CFR 82.32 describing sites for sample collection. We are correcting this error in the regulatory text of the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5777.

In FR Doc. 91-2071, amendment number 5, page 3741, first column, lines 16, 43 and 48 are corrected as follows:

§ 82.32 [Corrected]

1. In § 82.32, in paragraph (c)(1) once in the first sentence and in paragraph (c)(2) twice in the third sentence, the phrase "or egg transport machinery" is added immediately following the word "manure" each time it appears, and in paragraph (c)(2) the reference to "paragraph (b)(1)(i)" is changed to read "paragraph (b)(1)".

Done in Washington, DC, this 11th day of March 1991.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 91-6266 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1360¹

Passports

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR part 51 to authorize United States Department of State Officials to transfer to the United States Postal Service the execution fee for each passport application accepted

by that Service as provided for in 22 U.S.C. 214 as amended by Public Law 93-417, Fees for execution and issuance of passports; persons excused from payment.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, Washington, DC 20522-1705, telephone: (202) 326-6172.

SUPPLEMENTARY INFORMATION:

Subsection 51.61(b) is being amended to include authorization to reimburse the United States Postal Service an amount equal to the product of the number of fee passport applications accepted and the execution fee as established and set forth by the Secretary of State, in accordance with 22 U.S.C. 214 as amended by Public Law 93-417 governing fees for execution and issuance of passports.

List of Subjects in 22 CFR Part 51

Passports.

For the reasons set forth in the summary, 22 CFR part 51 is amended as follows:

1. The authority citation for part 51, § 51.61 continues to read as follows:

Authority: Sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 2, 44 Stat. 887; sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 214, 217a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966-70 Comp. p. 507.

§ 51.61 [Amended]

2. Section 51.61(b) is revised as follows:

(b) *Execution fee.* Except as provided in § 51.63(b), the fee for execution of an application for a U.S. passport is \$7.00, which shall be remitted to the U.S. Treasury when an application is executed before a Federal official, but which may be collected and retained by any State official before whom an application is executed, or which may be transferred to the United States Postal Service for each application accepted by that Service. The execution fee shall be paid only when an application must be executed under oath or affirmation as prescribed by § 51.21(a).

Dated: February 20, 1991.

For the Secretary of State.

Elizabeth M. Tamposi,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 91-6149 Filed 3-14-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8338]

RIN 1545-AE34

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the amendments made to section 907 of the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). The amendments made by TEFRA require that foreign oil and gas extraction income (FOGEI) and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income (FORI). The amendments made by TAMRA remove dividends paid by a domestic corporation from inclusion within foreign oil related income.

EFFECTIVE DATES: The amendments are effective for taxable years beginning after December 31, 1982, except as follows. The special rule at § 1.907(c)-2(d)(4) for determination on a facts and circumstances basis of the part of the section 907(c)(3)(C) amount that is attributable to FOGEI, FORI, and other income is effective for taxable years ending after January 23, 1989. The special rule provided at § 1.907(c)-2(d)(7) with respect to allocation of earnings and profits or deficits that arise in taxable years beginning after December 31, 1986, is effective after December 31, 1986. The special rules provided for determination of FORI and FOGEI tax with respect to dividends received and amounts includable in gross income under section 951(a) in taxable years beginning after December 31, 1986, at § 1.907(c)-3(b)(1) and (c), respectively, are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC-CORP:T:R(INTL-152-86) (202-566-6285, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

On January 23, 1989, the Federal Register published amendments (54 FR 3004) to the Income Tax Regulations (26 CFR part 1) under section 907 of the Internal Revenue Code. These amendments conformed the regulations to changes made to section 907 by section 211 (96 Stat. 448) of TEFRA. Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. This Treasury Decision also conforms the regulations to a change made to section 907(c)(3) by section 1012 of TAMRA (102 Stat. 3501).

Explanation of Provisions

These final regulations include only one principal change from the temporary regulations. The temporary regulations at § 1.907(b)-1T(b) set forth an objective safe harbor formula method for the determination of whether the foreign law imposing a FORI tax will be considered to be either structured in a manner, or to operate in a manner, so that the amount of tax imposed on FORI is generally materially greater than the tax imposed by the foreign law on income that is neither FORI nor FOGEI.

Commenters criticized the temporary regulations on several grounds. First, in their view, the safe harbor method improperly reduces creditable FORI taxes even though there has not been a shifting of taxes away from taxes on FOGEI. They assert that this result is contrary to the intent of Congress. Second, in their view, the method disallows FORI tax credits regardless of whether the difference in tax burdens is materially greater over a reasonable period of time. In addition, they contend that the method is at odds with various treaty commitments which allow for the crediting of various taxes on FORI even though those taxes are imposed in addition to the general corporate tax.

In light of the views expressed by the commenters, the safe harbor method has been replaced in the final regulations with a facts and circumstances test as suggested by the commenters. Under this test, the creditability of otherwise creditable FORI taxes will be limited only if there has been a shifting of tax from a tax on FOGEI to a tax on FORI. This determination will be made on a facts and circumstances basis.

A commenter criticized § 1.907(c)-1T(c), which provides for the carry forward of a foreign oil and gas extraction loss to

recharacterize FOGEI in future years as foreign-source income that is not FOGEI, because the rule in the regulations operates irrespective of whether the loss resulted in a tax benefit. The final regulations do not include a tax benefit rule because the Senate Finance Committee (S. Rep. No. 494, 97th Cong., 2d Sess. 151 (1982)), in explaining the rule, stated that recharacterization is to occur even though the taxpayer obtained no tax benefit from the loss.

Section 1.907(c)-1(f)(4) has been revised to provide that for taxable years beginning after 1986, exchange gain or loss from a section 988 transaction may be FORI or FOGEI only if directly related to the business needs (under the principles of section 954(c)(1)(D)) attributable to the conduct of the section 907(c) activity.

Section 1.907(c)-2(d)(3) has been revised in the final regulations to reflect that section 1012 of TAMRA amended section 907(c)(3) so that dividends paid after December 31, 1986, by a domestic corporation will no longer be FORI.

In light of the Supreme Court decision in *Arkansas Best Corp. v. Commissioner*, 485 U.S. 212 (1988), the temporary regulations at § 1.907(c)-1T(e)(3) (and as cross-referenced at 1.907(c)-1A(d)(3)) provided that for all years, stock of any corporation will not be treated as an asset used by a person in section 907(c) activities. Therefore, income (or loss) from the sale of stock will never be FOGEI or FORI. One commenter suggested that the decision in *Arkansas Best* does not justify the position taken in the regulations. In addition, the commenter objected to applying the regulations on a retroactive basis. After further review, we think the position taken in the temporary regulations, on both a retroactive and prospective basis, was consistent with the Supreme Court's decision. Accordingly, the regulations provision has not been changed.

Section 1.907(c)-2(f) has been revised to provide that for taxable years beginning after 1986, the principles of § 1.904-5(h) and (i) shall be applied to determine whether (and to what extent) a person's distributive share of the income of any partnership is FORI and FOGEI. Thus, for example, a less-than-10 percent corporate partner's share of income of the partnership would generally be treated as passive income to the partner, and not as FORI or FOGEI, unless an exception under § 1.904-5(h) and (i) applies.

In response to commenters' suggestions, paragraphs (a) and (d)(7) of § 1.907(c)-2 and paragraph (b)(1) and (2)(iii) of § 1.907(c)-3 have been clarified.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration (SBA) for comment on their impact on small business. The SBA did not comment on these regulations.

Drafting Information

The principal author of these regulations is Richard L. Chewing of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR §§ 1.861 through 1.997-1

Aliens, Corporate deductions, DISC, Exports, Foreign investments in United States, Foreign tax credit, FSC, Income taxes, Petroleum, Reporting and recordkeeping requirements, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the citation for § 1.907(b)-1 and by adding a new citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.907b-1 is also issued under 26 U.S.C. 907(b). * * *

Par. 2. Section 1.907-0 is revised to read as follows:

§ 1.907-0 Outline of regulation provisions for section 907.

This section lists the paragraphs contained in §§ 1.907(a)-0 through 1.907(f)-1A.

Regulations Applicable to Taxable Years Beginning After December 31, 1982

§ 1.907(a)-0 Introduction (for taxable years beginning after December 31, 1982).

- (a) Effective dates.
- (b) Key terms.
- (c) FOGEI tax limitation.
- (d) Reduction of creditable FORI taxes.
- (e) FOGEI and FORI.
- (f) Posted prices.
- (g) Transitional rules.
- (h) Section 907(f) carrybacks and carryovers.
- (i) Statutes covered.

§ 1.907(a)-1 Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982).

- (a) Amount of reduction.
- (b) Foreign taxes paid or accrued.
- (1) Foreign taxes.
- (2) Foreign taxes paid or accrued.
- (c) Limitation level.
- (1) In general.
- (2) Limitation percentage of corporations.
- (3) Limitation percentage of individuals.
- (4) Losses.
- (5) Priority.
- (d) Illustrations.
- (e) Effect on other provisions.
- (1) Deduction denied.
- (2) Reduction inapplicable.
- (3) Section 78 dividend.
- (f) Section 904 limitation.

§ 1.907(b)-1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).

- (a) In general.
- (b) Amount of income, war profits, or excess profits tax.
- (1) Dual capacity taxpayer.
- (2) Non-dual capacity taxpayer.
- (c) Amount that is not income, war profits, or excess profits tax.
- (d) Examples.

§ 1.907(c)-1 Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982).

- (a) Scope.
- (b) FOGEI.
- (1) General rule.
- (2) Amount.
- (3) Other circumstances.
- (4) Income directly related to extraction.
- (5) Income not included.
- (6) Fair market value.
- (7) Economic interest.
- (c) Carryover of foreign oil extraction losses.
- (1) In general.
- (2) Reduction.
- (3) Foreign oil extraction loss defined.
- (4) Affiliated groups.
- (5) FOGEI taxes.
- (6) Examples.
- (d) FORI.
- (1) In general.
- (2) Transportation.
- (3) Distribution or sale.
- (4) Processing.
- (5) Primary product from oil.
- (6) Primary product from gas.
- (7) Directly related income.
- (e) Assets used in a trade or business.
- (1) In general.

- (2) Section 907(c) activities.
- (3) Stock.
- (4) Losses on sale of stock.
- (5) Character of gain or loss.
- (6) Allocation of amount realized.
- (7) Interest.
- (f) Terms and items common to FORI and FOGEI.

- (1) Minerals.
- (2) Taxable income.
- (3) Interest on working capital.
- (4) Exchange gain or loss.
- (5) Allocation.
- (6) Facts and circumstances.
- (g) Directly related income.
- (1) In general.
- (2) Directly related services.
- (3) Leases and licenses.
- (4) Related person.
- (5) Gross income.
- (h) Coordination with other provisions.
- (1) Certain adjustments.
- (2) Section 901(f).

§ 1.907(c)-2 Section 907(c)(3) items (for taxable years beginning after December 31, 1982).

- (a) Scope.
- (b) Dividend.
- (1) Section 1248.
- (2) Section 78 dividend.
- (c) Taxes deemed paid.
- (1) Voting stock test.
- (2) Dividends and interest.
- (3) Amounts included under section 951(a).
- (d) Amount attributable to certain items.
- (1) Certain dividends.
- (2) Interest received from certain foreign corporations.
- (3) Dividends from domestic corporation.
- (4) Amounts with respect to which taxes are deemed paid under section 960(a).
- (5) Section 78 dividend.
- (6) Special rule.
- (7) Deficits.
- (8) Illustrations.
- (e) Dividends, interest, and other amounts from sources within a possession.
- (f) Income from partnerships, trusts, etc.

§ 1.907(c)-3 FOGEI and FORI taxes (for taxable years beginning after December 31, 1982).

- (a) Tax characterization, allocation and apportionment.
- (1) Scope.
- (2) Three classes of income.
- (3) More than one class in a foreign tax base.
- (4) Allocation of tax within a base.
- (5) Modified gross income.
- (6) Allocation of tax credits.
- (7) Withholding taxes.
- (b) Dividends.
- (1) In general.
- (2) Section 78 dividend.
- (c) Includable amounts under section 951(a).
- (d) Partnerships.
- (e) Illustrations.

§ 1.907(d)-1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).

- (a) In general.
- (1) Scope.
- (2) Initial computation requirement.

- (3) Burden of proof.
- (4) Related parties.
- (b) Adjustments.
- (c) Definitions.
- (1) Foreign government.
- (2) Minerals.
- (3) Posted price.
- (4) Other pricing arrangement.
- (5) Fair market value.

§ 1.907(e)-1 Transitional rules (for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982).

- (a) General rule.
- (b) Rules for carryover for FORI and pre-TEFRA non-FORI taxes.
- (c) Examples.

§ 1.907(f)-1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).

- (a) In general.
- (b) Unused FOGEI.
- (1) In general.
- (2) Year of origin.
- (c) Tax deemed paid or accrued.
- (d) Excess extraction limitation.
- (e) Excess general section 904 limitation.
- (f) Section 907(f) priority.
- (g) Cross-reference.
- (h) Example.

Regulations Applicable to Taxable Years Beginning Before January 1, 1983

§ 1.907(a)-0A Introduction (for taxable years beginning before January 1, 1983).

- (a) Key terms.
- (b) FOGEI tax limitation.
- (c) Section 904 limitation.
- (d) FOGEI and FORI.
- (e) Posted prices.
- (f) Transitional rules.
- (g) Section 907(f) carrybacks and carryovers.
- (h) Cross-references.
- (i) Statutes covered.
- (j) Pre-TEFRA Code references.

§ 1.907(a)-1A Reduction in taxes paid on FOGEI (for taxable years beginning before January 1, 1983).

- (a) Amount of reduction.
- (b) Foreign taxes paid or accrued.
- (1) Foreign taxes.
- (2) Foreign taxes paid or accrued.
- (c) Limitation level.
- (1) In general.
- (2) Limitation percentage for corporations.
- (3) Limitation percentage for individuals.
- (4) Losses.
- (5) Priority.
- (d) Illustrations.
- (e) Effect on other provisions.
- (1) Deduction denied.
- (2) Reduction inapplicable.
- (3) Section 78 dividend.

§ 1.907(b)-1A Application of section 904 limitation with respect to FORI (for taxable years beginning before January 1, 1983).

- (a) In general.
- (b) Overall limitation.
- (c) FORI taxes.

§ 1.907(b)-2A FORI tax carryovers and carrybacks (for taxable years beginning before January 1, 1983).

- (a) Modification in use of § 1.904-2.
- (b) Unused foreign tax.
- (1) General rule.
- (2) Per-country limitation year.
- (c) Tax deemed paid or accrued with respect to FORI.

- (d) Excess FORI limitation.
- (1) When overall limitation applies.
- (2) Per-country limitation year.
- (e) Cross-reference.
- (f) Separation of limitation.
- (1) General rule.
- (2) Special rules.
- (g) Illustrations.

§ 1.907(c)-1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).

- (a) Scope.
- (b) Extraction income.
- (1) General rule.
- (2) Amount.
- (3) Other circumstances.
- (4) Income directly related to extraction.
- (5) Income not included.
- (6) Fair market value.
- (7) Economic interest.
- (c) Other FORI.
- (1) In general.
- (2) Transportation.
- (3) Distribution or sale.
- (4) Processing.
- (5) Primary product from oil.
- (6) Primary product from gas.
- (7) Directly related income.
- (d) Assets used in a trade or business.
- (1) In general.
- (2) Section 907(c) activities.
- (3) Stock.
- (4) Losses on sale of stock.
- (5) Character of gain or loss.
- (6) Allocation of amount realized.
- (7) Interest.
- (e) Terms and items common to other FORI and FOGEI.

- (1) Minerals.
- (2) Taxable income.
- (3) Interest on working capital.
- (4) Exchange gain or loss.
- (5) Allocation.
- (6) Facts and circumstances.
- (f) Directly related income.
- (1) In general.
- (2) Directly related services.
- (3) Leases and licenses.
- (4) Related person.
- (5) Gross income.
- (g) Certain net operating losses.
- (1) In general.
- (2) Passive income.
- (3) Source rule.
- (h) Coordination with other provisions.
- (1) Certain adjustments.
- (2) Section 901(f).

§ 1.907(c)-2A Section 907(c)(3) items (for taxable years beginning before January 1, 1983).

- (a) Scope.
- (b) Dividend.
- (1) Section 1248 dividend.
- (2) Section 78 dividend.
- (c) Taxes deemed paid.
- (1) Voting stock test

- (2) Dividends and interest.
- (3) Amounts included under section 951(a).
- (d) Amount attributable to certain items.
- (1) Certain dividends.
- (2) Interests received from certain foreign corporations.
- (3) Dividends from domestic corporation.
- (4) Amounts with respect to which taxes are deemed paid under section 960(a).
- (5) Section 78 dividend.
- (6) Special rule.
- (7) Deficits.
- (8) Illustrations.
- (e) Dividends, interest, and other amounts from sources within a possession.
- (f) Income from partnerships, trust, etc.

§ 1.907(c)-3A FOGEI and FORI taxes (for taxable years beginning before January 1, 1983).

- (a) Tax allocation.
- (1) Scope.
- (2) Three classes of income.
- (3) More than one class in a foreign tax base.
- (4) Allocation of tax within a base.
- (5) Modified gross income.
- (6) Allocation of tax credits.
- (7) Coordination with regulations under section 901.
- (8) Withholding taxes.
- (b) Dividends.
- (1) In general.
- (2) Section 78 dividend.
- (c) Includable amounts under section 951(a).
- (d) Partnerships.
- (e) Illustrations.

§ 1.907(d)-1A Disregard of posted prices for purposes of Chapter 1 of the Code (for taxable years beginning before January 1, 1983).

- (a) In general.
- (1) Scope.
- (2) Initial computation requirement.
- (3) Burden of proof.
- (4) Related parties.
- (b) Adjustments.
- (c) Definitions.
- (1) Foreign government.
- (2) Minerals.
- (3) Posted price.
- (4) Other pricing arrangement.
- (5) Fair market value.

§ 1.907(e)-1A Transitional rules for section 904 carrybacks and carryovers (for taxable years beginning before January 1, 1983).

- (a) Carryovers from taxable years ending before January 1, 1975.
- (1) In general.
- (2) Section 901(e) and 907(a).
- (3) General rule for division of unused foreign tax.
- (4) Computation.
- (5) Illustrations.
- (b) Transitional rules for carryovers from per-country limitation years ending before January 1, 1976.
- (1) In general.
- (2) Pro rata reduction of carryovers.
- (3) Illustrations.
- (c) Transitional rules for carryback from taxable years ending after December 31, 1974.
- (1) In general.
- (2) Applicable principles.

§ 1.907(f)-1A Carryback and carryover of credits disallowed by section 907(a) (for taxable years beginning before January 1, 1983).

- (a) In general.
- (b) Unused foreign extraction tax.
- (1) In general.
- (2) Limit.
- (3) Year of origin.
- (c) Tax deemed paid or accrued.
- (d) Excess extraction limitation.
- (e) Excess oil related limitation.
- (f) Limitation percentage in certain excess limitation years.
- (g) Section 907(f) priority.
- (h) Per-country limitation.
- (i) Cross-reference.
- (j) Illustration.

Par. 3. Sections 1.907(a)-0T through 1.907(f)-1T are removed.

Par. 4. Sections 1.907(a)-0 through 1.907(f)-1 are added after the undesignated centerheading "REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982" to read as follows:

§ 1.907(a)-0 Introduction (for taxable years beginning after December 31, 1982).

(a) *Effective dates.* The provisions of §§ 1.907(a)-0 through § 1.907(f)-1 apply to taxable years beginning after December 31, 1982. For provisions that apply to taxable years beginning before January 1, 1983, see §§ 1.907(a)-0A through 1.907(f)-1A.

(b) *Key terms.* For purposes of the regulations under section 907—

(1) *FOGEI* means foreign oil and gas extraction income.

(2) *FORI* means foreign oil related income.

(3) *FOGEI taxes* mean foreign oil and gas extraction taxes as defined in section 907(c)(5).

(4) *FORI taxes* means foreign taxes on foreign oil related income. See § 1.907(c)-3.

(c) *FOGEI tax limitation.* Section 907(a) limits the foreign tax credit for taxes paid or accrued on FOGEI. See § 1.907(a)-1.

(d) *Reduction of creditable FORI taxes.* Section 907(b) recharacterizes FORI taxes as non-creditable deductible expenses to the extent that the foreign law imposing the FORI taxes is structured, or in fact operates, so that the amount of tax imposed with respect to FORI will be materially greater, over a reasonable period of time, than the amount generally imposed on income that is neither FOGEI nor FORI. See § 1.907(b)-1.

(e) *FOGEI and FORI.* FOGEI includes the taxable income from the extraction of minerals from oil or gas wells by a taxpayer (or another person) and from the sale or exchange of assets used in

the extraction business. FORI includes taxable income from the activities of processing oil and gas into their primary products, transporting or distributing oil and gas and their primary products, and from the disposition of assets used in these activities. For this purpose, a disposition includes only a sale or exchange. FOGEI and FORI may also include taxable income from the performance of related services or from the lease of related property and certain dividends, interest, or amounts described in section 951(a). See §§ 1.907(c)-1 through 1.907(c)-3.

(f) *Posted prices.* Certain sales prices are disregarded when computing FOGEI for purposes of chapter 1 of the Code. See § 1.907(d)-1.

(g) *Transitional rules.* Section 907(e) provides rules for the carryover of unused FOGEI taxes from taxable years beginning before January 1, 1983, and carryback of FOGEI taxes arising in taxable years beginning after December 31, 1982. See § 1.907(e)-1.

(h) *Section 907(f) carrybacks and carryovers.* FOGEI taxes disallowed under section 907(a) may be carried back or forward to other taxable years. These FOGEI taxes may be absorbed in another taxable year to the extent of the lesser of the separate excess extraction limitation or the excess limitation in the general limitation category (section 904(d)(1)(I)) for the carryback or carryover year. See § 1.907(f)-1.

(i) *Statutes covered.* The regulations under section 907 are issued as a result of the enactment of section 601 of the Tax Reduction Act of 1975, of section 1035 of the Tax Reform Act of 1976, of section 301(b)(14) of the Revenue Act of 1978, of section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 and of section 1012(g)(6) (A)-(B) of the Technical and Miscellaneous Revenue Act of 1988.

§ 1.907(a)-1 Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982).

(a) *Amount of reduction.* FOGEI taxes are reduced by the amount by which they exceed a limitation level (as defined in paragraph (c) of this section).

(b) *Foreign taxes paid or accrued.* For purposes of the regulations under section 907—

(1) *Foreign taxes.* The term "foreign taxes" means income, war profits, or excess profits taxes of foreign countries or possessions of the United States otherwise creditable under section 901 (including those creditable by reason of section 903).

(2) *Foreign taxes paid or accrued.* The terms "foreign taxes paid or accrued," "FOGEI taxes paid or accrued," and

"FORI taxes paid or accrued" include foreign taxes deemed paid under sections 902 and 960. Unless otherwise expressly provided, these terms do not include foreign taxes deemed paid by reason of sections 904(c) and 907(f).

(c) *Limitation level—(1) In general.* The limitation level is FOGEI for the taxable year multiplied by the limitation percentage for that year.

(2) *Limitation percentage for corporations.* A corporation's limitation percentage is the highest rate of tax specified in section 11(b) for the particular year.

(3) *Limitation percentage for individuals.* Section 907(a)(2)(B) provides that the limitation percentage for individual taxpayers is the effective rate of tax for those taxpayers. The effective rate of tax is computed by dividing the entire tax, before the credit under section 901(a) is taken, by the taxpayer's entire taxable income.

(4) *Losses.* (i) For purposes of determining whether income is FOGEI, a taxpayer's FOGEI will be recharacterized as foreign source non-FOGEI to the extent that FOGEI losses for preceding taxable years beginning after December 31, 1982, exceed the amount of FOGEI already recharacterized. See § 1.907(c)-1(c). However, taxes that were paid or accrued on the recharacterized FOGEI will remain FOGEI taxes.

(ii) Taxes paid or accrued by a person to a foreign country may be FOGEI taxes even though that person has under U.S. law a net operating loss from sources within that country.

(iii) For purposes of determining whether income is FOGEI, a taxpayer's income will be treated as income from sources outside the United States even though all or a portion of that income may be resourced as income from sources within the United States under section 904(f) (1) and (4).

(5) *Priority.* (i) Section 907(a) applies before section 908, relating to reduction of credit for participation in or cooperation with an international boycott.

(ii) Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907.

(d) *Illustrations.* Paragraphs (a) through (c) of this section are illustrated by the following examples.

Example 1. M, a U.S. corporation, uses the accrual method of accounting and the calendar year as its taxable year. For 1984, M has \$20,000 of FOGEI, derived from operations in foreign countries X and Y, and has accrued \$11,500 of foreign taxes with respect to FOGEI. The highest tax rate specified in section 11(b) for M's 1984 taxable

year is 48 percent. Pursuant to section 907(a), M's FOGEI taxes limitation level for 1984 is \$9,200 ($48\% \times \$20,000$). The foreign taxes in excess of this limitation level (\$2,300) may be carried back or forward. See section 907(f) and § 1.907(f)-1 and section 907(e) and § 1.907(e)-1.

Example 2. The facts are the same as in *Example 1* except that M is a partnership owned equally by U.S. citizens A and B who each file as unmarried individuals and do not itemize deductions. Pursuant to section 905(a), A and B have elected to credit foreign taxes in the year accrued. The total amount of foreign taxes accrued by A and B with respect to their distributive shares of M's FOGEI is \$11,500 (\$5,750 accrued by A and \$5,750 accrued by B). A and B have no other FOGEI. A's only taxable income for 1984 is his 50% distributive share (\$10,000) of M's FOGEI and A has a preliminary U.S. tax liability of \$1,079. B has \$112,130 of taxable income for 1984 (including his 50% distributive share (\$10,000) of M's FOGEI) and has a preliminary U.S. tax liability of \$44,000. Pursuant to section 907(a), A's FOGEI taxes limitation level for 1984 is \$1,079 ($[(\$1,079/\$10,000) \times \$10,000]$) and B's FOGEI taxes limitation level for 1984 is \$3,924 ($[(\$44,000/\$112,130) \times \$10,000]$).

(e) *Effect on other provisions—(1) Deduction denied.* If a credit is claimed under section 901, no deduction under section 164(a)(3) is allowed for the amount of the FOGEI taxes that exceed a taxpayer's limitation level for the taxable year. See section 275(a)(4)(A). Thus, FOGEI taxes disallowed under section 907(a) are not added to the cost or inventory amount of oil or gas.

(2) *Reduction inapplicable.* The reduction under section 907(a) does not apply to a taxpayer that deducts foreign taxes and does not claim the benefits of section 901 for a taxable year.

(3) *Section 78 dividend.* The reduction under section 907(a) has no effect on the amount of foreign taxes that are treated as dividends under section 78.

(f) *Section 904 limitation.* FOGEI taxes as reduced under section 907(a) are creditable only to the extent permitted by the general limitation of section 904(d)(1)(I).

§ 1.907(b)-1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).

If the foreign law imposing a FORI tax (as defined in § 1.907(c)-3) is either structured in a manner, or operates in a manner, so that the amount of tax imposed on FORI is generally materially greater than the tax imposed by the foreign law on income that is neither FORI nor FOGEI ("described manner"), section 907(b) provides a special rule which limits the amount of FORI taxes paid or accrued by a person to a foreign country which will be considered income, war profits, or excess profits

taxes. Section 907(b) will apply to a person regardless of whether that person is a dual capacity taxpayer as defined in § 1.901-2(a)(2)(ii)(A). (In general, a dual capacity taxpayer is a person who pays an amount to a foreign country part of which is attributable to an income tax and the remainder of which is a payment for a specific economic benefit derived from that country.) Foreign law imposing a tax on FORI will be considered either to be structured in or to operate in the described manner only if, under the facts and circumstances, there has been a shifting of tax by the foreign country from a tax on FOGEI to a tax on FORI.

§ 1.907(c)-1 Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982).

(a) *Scope.* This section explains the meaning to be given certain terms and items in section 907(c) (1), (2), and (4). See also §§ 1.907(a)-0(b) and 1.907(c)-2 for further definitions.

(b) *FOGEI—(1) General rule.* Under section 907(c)(1), FOGEI means taxable income (or loss) derived from sources outside the United States and its possessions from the extraction (by the taxpayer or any other person) of minerals from oil or gas wells located outside the United States and its possessions or from the sale or exchange of assets used by the taxpayer in the trade or business of extracting those minerals. Extraction of minerals from oil or gas wells will result in gross income from extraction in every case in which that person has an economic interest in the minerals in place. For other circumstances in which gross income from extraction may arise, see paragraph (b)(3) of this section. For determination of the amount of gross income from extraction, see paragraph (b)(2) of this section. For definition of the phrase "assets used by the taxpayer in the trade or business" and for rules relating to that type of FOGEI, see paragraph (e)(1) of this section. The term "minerals" is defined in paragraph (f)(1) of this section. For determination of taxable income, see paragraph (f)(2) of this section. FOGEI includes, in addition, items listed in section 907(c)(3) (relating to dividends, interest, partnership distributions, etc.) and explained in § 1.907(c)-2. For the reduction of what would otherwise be FOGEI by losses incurred in a prior year, see section 907(c)(4) and paragraph (c) of this section.

(2) *Amount.* The gross income from extraction is determined by reference to the fair market value of the minerals in the immediate vicinity of the well. Fair

market value is determined under paragraph (b)(6) of this section.

(3) *Other circumstances.* Gross income from extraction or the sale or exchange of assets described in section 907(c)(1)(B) includes income from any arrangement, or a combination of arrangements or transactions, to the extent the income is in substance attributable to the extraction of minerals or such a sale or exchange. For instance, a person may have gross income from such a sale or exchange if the person purchased minerals from a foreign government at a discount and the discount reflects an arm's-length amount in consideration for the government's nationalization of assets that person owned and used in the extraction of minerals.

(4) *Income directly related to extraction.* Gross income from extraction includes directly related income under paragraph (g) of this section.

(5) *Income not included.* FOGEI as otherwise determined under this paragraph (b), nevertheless, does not include income to the extent attributable to marketing, distributing, processing or transporting minerals or primary products. Income from the purchase and sale of minerals is not ordinarily FOGEI. If the foreign taxes paid or accrued in connection with income from a purchase and sale are not creditable by reason of section 901(f), that income is not FOGEI. A taxpayer to whom section 901(f) applies is not a producer.

(6) *Fair market value.* For purposes of this paragraph (b), the fair market value of oil or gas in the immediate vicinity of the well depends on all of the facts and circumstances as they exist relative to a party in any particular case. The facts and circumstances that may be taken into account include, but are not limited to, the following—

(i) The facts and circumstances pertaining to an independent market value (if any) in the immediate vicinity of the well.

(ii) The facts and circumstances pertaining to the relationships between the taxpayer and the foreign government. If an independent fair market value in the immediate vicinity of the well cannot be determined but fair market value at the port, or a similar point, in the foreign country can be determined (port price), an analysis of the arrangement between the taxpayer and the foreign government that retains a share of production could be evidence of the appropriate, arm's-length difference between the port price and the field price, and

(iii) The other facts and circumstances pertaining to any difference in the producing country between the field and port prices.

(7) *Economic interest.* For purposes of this paragraph (b), the term "economic interest" means an economic interest as defined in § 1.611-1(b)(1), whether or not a deduction for depletion is allowable under section 611.

(c) *Carryover of foreign oil extraction losses—(1) In general.* Pursuant to section 907(c)(4), the determination of FOGEI for a particular taxable year takes into account a foreign oil extraction loss incurred in prior taxable years beginning after December 31, 1982. There is no time limitation on this carryover of foreign oil extraction losses. Section 907(c)(4) does not provide for any carryback of these losses. Section 907(c)(4) operates solely for purposes of determining FOGEI and thus operates independently of section 904(f).

(2) *Reduction.* That portion of the income of the taxpayer for the taxable year which but for this paragraph (c) would be treated as FOGEI is reduced (but not below zero) by the excess of—

(i) The aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, over

(ii) The aggregate amount of reductions under this paragraph (c) for preceding taxable years beginning after December 31, 1982.

(3) *Foreign oil extraction loss defined—(i) In general.* For purposes of this paragraph (c), the term "foreign oil extraction loss" means the amount by which the gross income for the taxable year that is taken into account in determining FOGEI for that year is exceeded by the sum of the deductions properly allocated and apportioned to that gross income as determined under paragraph (f)(2) of this section. A person can have a foreign oil extraction loss for a taxable year even if the person has not chosen the benefits of section 901 for that year.

(ii) *Items not taken into account.* For purposes of paragraph (c)(3)(i) of this section, the following items are not taken into account—

(A) The net operating loss deduction allowable for the taxable year under section 172(a).

(B) Any foreign expropriation loss (as defined in section 172(h)) for the taxable year, and

(C) Any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft.

A loss mentioned in paragraph (c)(3)(ii) (B) or (C) of this section is taken into

account, however, to the extent compensation (for instance by insurance) for the loss is included in gross income.

(4) *Affiliated groups.* The foreign oil extraction loss of an affiliated group of corporations (within the meaning of section 1504(a)) that files a consolidated return is determined on a group basis. If the group does not have a foreign oil extraction loss, the foreign oil extraction loss of a member of that group will not reduce on a separate basis that member's FOGEI for a later taxable year. For special rules affecting the foreign oil extraction loss in the case of certain related domestic corporations that are not members of the same affiliated group, see section 904(i).

(5) *FOGEI taxes.* If FOGEI is reduced pursuant to this paragraph (c) (and thereby recharacterized as non-FOGEI income), any foreign taxes imposed on the FOGEI that is recharacterized as other income retain their character as FOGEI taxes. See section 907(c)(5).

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example 1—(i) Facts. X, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. X has only the following combined foreign tax items for the three countries (prior to the application of this paragraph (c)) for 1983, 1984, and 1985:

| | 1983 | 1984 | 1985 |
|---|----------|--------|--------|
| FOGEI | \$ (700) | \$ 100 | \$ 450 |
| FOGEI taxes | 10 | 60 | 200 |
| Net operating loss deduction | (200) | 0 | 0 |
| Foreign oil extraction loss allowable after adjustment for paragraph (c)(3)(ii) amounts | (500) | 0 | 0 |
| General limitation taxes other than FOGEI taxes | 30 | 90 | 230 |

(ii) *1983.* Because X's FOGEI for 1983 is a loss of \$ (700), X's section 907(a) limitation for 1983 is \$0 ($.46 \times \0). Thus, none of the FOGEI taxes paid or accrued in 1983 (\$10) can be credited in 1983. They can, however, be carried back to 1981 or 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1.

(iii) *1984.* X's FOGEI for 1984, prior to the application of this paragraph (c), is \$100. X has a foreign oil extraction loss for 1983 of \$ (500). This loss must be applied against X's preliminary FOGEI of \$100 for 1984. Thus, X's FOGEI for 1984 is \$0 and X has \$ (400) ($\$500 - \100) of foreign oil extraction loss from 1983 to be carried to 1985. Since X's FOGEI for 1984 is \$0, its section 907(a) limitation is \$0 ($.46 \times \0). Therefore, none of the FOGEI taxes paid or accrued in 1984 (\$60)

can be credited in 1984. They can, however, be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1.

(iv) *1985.* X's FOGEI for 1985, prior to the application of this paragraph (c), is \$450. X's remaining foreign oil extraction loss carryover from 1983 is \$ (400) and this must be applied against X's preliminary FOGEI of \$450 for 1985. Thus, X's FOGEI for 1985 is \$50 ($\$450 - \400). X's section 907(a) limitation is \$23 ($.46 \times \50). Therefore, \$23 of the FOGEI taxes paid or accrued in 1985, together with the other \$230 of general limitation taxes, can be credited in 1985, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). The excess of FOGEI taxes, \$177 ($\$200 - \23), can be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1.

Example 2—(i) Facts. The facts are the same as in *Example 1* except that X's paragraph (c)(3)(ii) items for 1983 allocable to FOGEI are \$ (800) instead of \$ (200). FOGEI remains a loss of \$ (700). Thus, X does not have a foreign oil extraction loss for 1983 because it has \$100 of FOGEI when its paragraph (c)(3)(ii) items are not taken into account ($\$700 + \800).

(ii) *1983.* The results are the same as in *Example 1*.

(iii) *1984.* Although X had FOGEI loss of \$ (700) in 1983, there is not a loss that can be carried forward after adjustment for paragraph (c)(3)(ii) items. Thus, X's FOGEI for 1984 is not reduced by the 1983 loss. X's section 907(a) limitation for 1984 is \$46 ($.46 \times \100). Therefore, \$46 of the FOGEI taxes paid or accrued in 1984, together with the other \$90 of general limitation taxes, can be credited in 1984, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). The excess of \$14 ($\$60 - \46) can be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1.

(iv) *1985.* Since there is no foreign oil extraction loss for either 1983 or 1984 to be applied in 1985, X's FOGEI for 1985 is \$450. Thus, its section 907(a) limitation for 1985 is \$207 ($.46 \times \450) and all of its FOGEI taxes paid or accrued in 1985 (\$200), together with the other \$230 of general limitation taxes, can be credited in 1985, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). FOGEI taxes in the amount of \$10 from 1983 and \$14 from 1984 may be carried forward to 1985 if they have not been used in carryback years. However, because the excess section 907(a) limitation for 1985 is only \$7, that is the maximum potential FOGEI taxes from 1983 or 1984 that may be used in 1985.

Example 3—(i) Facts. Y, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. Y's only foreign taxable income is income subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). Y has no paragraph (c)(3)(ii)

items. Y has the following foreign tax items for 1983 and 1984:

| | 1983 | 1984 |
|--------------------------------------|----------|-------|
| FOGEI | \$ (400) | \$300 |
| Other foreign taxable income | 250 | 200 |
| U.S. taxable income | 1,000 | 1,100 |
| Worldwide taxable income | 850 | 1,600 |
| FOGEI taxes | 10 | 180 |
| Other general limitation taxes | 50 | 40 |
| Foreign oil extraction loss | (400) | 0 |

(ii) *1983—(A) Section 907(a) limitation.* Because Y's FOGEI for 1983 is a loss of \$ (400), Y's section 907(a) limitation for 1983 is \$0. Thus, none of the FOGEI taxes paid or accrued in 1983 (\$10) can be credited in 1983. They can, however, be carried back to 1981 or 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1.

(B) *Section 904(d) fraction.* Y has a foreign loss of \$ (150) ($\$400 + \250) for 1983. Thus, its fraction for purposes of determining its general limitation of section 904(d)(1)(E) is \$0/\$850.

(iii) *1984—(A) Section 907(a) limitation.* Y's foreign oil extraction loss for 1983 is \$ (400). Applying this loss to its preliminary FOGEI for 1984 (\$300) eliminates all of Y's FOGEI for 1984. Because Y's FOGEI for 1984 is \$0, its section 907(a) limitation is also \$0. Thus, none of the FOGEI taxes paid or accrued in 1984 (\$180) can be credited in 1984. They can, however, be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1. Y has a remaining foreign oil extraction loss of \$ (100) from 1983 to be carried to 1985.

(B) *Section 904(d) fraction.* Y's preliminary foreign taxable income for purposes of determining its general limitation of section 904(d)(1)(E) is \$500 ($\$300 + \200). However, Y has an overall foreign loss from 1983 of \$ (150) ($\$400 + \250) and thus, pursuant to section 904(f), Y must recharacterize \$150 (lesser of \$150 or 50% of \$500) of its 1984 foreign taxable income as U.S. taxable income. Thus, Y's fraction for purposes of determining its general limitation of section 904(d)(1)(E) for 1984 is \$350/\$1,600.

Example 4—(i) Facts. Assume the same facts as in *Example 3* except that Y has the following foreign tax items:

| | 1983 | 1984 | 1985 |
|---|---------|----------|-------|
| FOGEI | | \$ (100) | \$225 |
| Other foreign source taxable income subject to the general limitation of section 904(d)(1)(E) | \$ (50) | | |
| U.S. source taxable income | 50 | | |
| Worldwide taxable income | | (100) | 225 |
| FOGEI taxes | | 10 | 125 |
| Foreign oil extraction loss | | (100) | |

(ii) 1983. For 1983, Y has a section 904(d)(1)(E) overall foreign loss account of \$50; see section 904(f) and § 1.904(f)-1(b).

(iii) 1984. Because Y's FOGEI for 1984 is a loss of \$(100), Y's section 907(a) limitation for 1984 is \$0. Thus, none of the FOGEI taxes paid or accrued in 1984 (\$10) can be credited in 1984. They can, however, be carried back under the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward under the provisions of section 907(f) and § 1.907(f)-1.

(iv) 1985. Y's FOGEI loss of \$(100) for 1984 is carried forward to 1985 and offsets FOGEI income in that amount in 1985. The entire section 904(d)(1)(E) overall foreign loss account of \$50 is recaptured in 1985; therefore, Y has \$75 of foreign source income and \$50 of U.S. source income. However, Y has \$125 of FOGEI since, for purposes of section 907(a), the \$50 resourced by section 904(f) will be treated as income from sources outside the United States; see § 1.907(a)-1(c)(4)(iii). Accordingly, Y's section 907(a) limitation is \$57.50 ($.46 \times \125). Y's section 904(d)(1)(E) limitation is, however, only \$34.50 ($.46 \times \75). Thus, Y may claim a foreign tax credit of \$34.50 in 1985. Y may carry back or carry forward \$23 ($\$57.50 - \34.50) and that amount is not subject to the section 907(a) limitation in the carry to year. In addition, \$67.50 ($\$125 - \57.50) may be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)-1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)-1. This amount is subject to the section 907(a) limitation in the carry to year.

(d) *FORI*—(1) *In general*. Section 907(c)(2) defines FORI to include taxable income from the processing of oil and gas into their primary products, from the transportation or distribution and sale of oil and gas and their primary products, from the disposition of assets used in these activities and from the performance of any other related service. FORI may also include, under section 907(c)(3), certain dividends, interest, or amounts described in section 951(a). This paragraph (d) defines certain terms and items applicable to FORI.

(2) *Transportation*. Gross income from transportation of minerals or primary products ("gross transportation income") is gross income arising from carrying minerals or primary products between two places (including time or voyage charter hires) by any means of transportation, such as a vessel, pipeline, truck, railroad, or aircraft. Except for directly related income under paragraphs (d)(7) and (g) of this section, gross transportation income does not include gross income received by a lessor from a bareboat charter hire of a means of transportation, certain other rental income, or income from the performance of certain services.

(3) *Distribution or sale*. The term "distribution or sale" means the sale or exchange of minerals or primary products to processors, users who

purchase, store, or use in bulk quantities, other persons for further distribution, retailers, or consumers. Gross income from distribution or sale includes interest income attributable to the distribution of minerals or primary products on credit.

(4) *Processing*. The term "processing" means the destructive distillation, or a process similar in effect to destructive distillation, of crude oil and the processing of natural gas into their primary products including processes used to remove pollutants from crude oil or natural gas.

(5) *Primary product from oil*. The term "primary product" (in the case of oil) means all products derived from the processing of crude oil, including volatile products, light oils (such as motor fuel and kerosene), distillates (such as naphtha), lubricating oils, greases and waxes, and residues (such as fuel oil).

(6) *Primary product from gas*. The term "primary product" (in the case of gas) means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefiable petroleum gases (such as ethane, propane, and butane), and liquid products (such as natural gasoline).

(7) *Directly related income*. FORI also includes directly related income under paragraph (g) of this section.

(e) *Assets used in a trade or business*—(1) *In general*. The term "assets used by the taxpayer in the trade or business" in section 907(c)(1)(B) and (2)(D) means property primarily used in one or more of the trades or businesses that are section 907(c) activities. For purposes of this paragraph (e), assets used in a trade or business are assets described in section 1231(b) (applied without regard to any holding period or the character of the asset as being subject to the allowance for depreciation under section 167).

(2) *Section 907(c) activities*. Section 907(c) activities are those described in section 907(c)(1)(A) (for FOGEI) or (c)(2)(A) through (C) (for FORI). If an asset is used primarily in one or more section 907(c) activities, then the entire gain (or loss) will be considered attributable to those activities. For example, if a person uses a service station primarily to distribute primary products from oil, then all of the gain (or loss) on the sale of the station is FORI even though the person uses the station to distribute products that are not primary products (such as tires or batteries). If an asset is not primarily used in one or more section 907(c) activities, then the entire gain or loss will not be FOGEI or FORI.

(3) *Stock*. Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities.

(4) *Losses on sale of stock*. If, under § 1.861-8(e)(7), a loss on the sale, exchange, or disposition of stock is considered a deduction which is definitely related and allocable to FOGEI or FORI, then notwithstanding § 1.861-8(e)(7) and paragraph (f)(2) of this section, this loss shall be allocated and apportioned to the same class of income that would have been produced if there were capital gain from the sale, exchange or disposition.

(5) *Character of gain or loss*. Except in the case of stock, gain or loss from the sale, exchange or disposition of assets used in the trade or business may be FORI or FOGEI to the extent taken into account in computing taxable income for the taxable year, whether or not the gain or loss is ordinary income or ordinary loss.

(6) *Allocation of amount realized*. The amount realized from the sale, exchange or disposition of several assets in one transaction is allocated among them in proportion to their respective fair market values. This allocation is made under the principles set forth in § 1.1245-1(a)(5) (relating to allocation between section 1245 property and non-section 1245 property).

(7) *Interest*. Gross income from the sale, exchange or disposition of an asset used in a section 907(c) activity includes interest income from such a sale, exchange or disposition.

(f) *Terms and items common to FORI and FOGEI*—(1) *Minerals*. The term "minerals" means hydrocarbon minerals extracted from oil and gas wells, including crude oil or natural gas (as defined in section 613A(e)). The term includes incidental impurities from these wells, such as sulphur, nitrogen, or helium. The term does not include hydrocarbon minerals derived from shale oil or tar sands.

(2) *Taxable income*. Deductions to be taken into account in computing taxable income or net operating loss attributable to FOGEI or FORI are determined under the principles of § 1.861-8. For an exception with regard to losses, see paragraph (e)(4) of this section.

(3) *Interest on working capital*. FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities described in section 907(c) (1) or (2).

(4) *Exchange gain or loss.* Exchange gain (and loss) may be FORI and FOGEL. For taxable years beginning after 1986, exchange gain or loss from a section 988 transaction may be FORI or FOGEL only if directly related to the business needs (under the principles of section 954(c)(1)(D)) attributable to the conduct of the section 907(c) activity.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraph (f) (3) and (4) of this section are allocated among FORI, FOGEL, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year-to-year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be FOGEL or FORI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. Also, if an oil company's oil concession or assets used in extraction activities described in section 907(c)(1)(A) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income derived from that nationalization or expropriation (including interest on the income paid pursuant to the nationalization or expropriation) is FOGEL. Likewise, if a company's assets used in the activities described in section 907(c)(2) (A) through (C) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income (including interest on the income paid pursuant to the nationalization or expropriation) derived from the nationalization or expropriation will be FORI.

Nationalization or expropriation is deemed to be a sale or exchange for purposes of section 907(c)(1)(B) and a disposition for purposes of section 907(c)(2)(D). In further example, assume that an oil company has an exclusive

right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purchase of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is FORI described in section 907(c)(2)(C). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be FORI).

(g) *Directly related income*—(1) *In general.* Section 907(c)(2)(E) and this paragraph (g) include in FORI, and this paragraph (g) includes in FOGEL, income from the performance of directly related services (as defined in paragraph (g)(2) of this section). This paragraph (g) also includes in FORI and FOGEL income from the lease or license of related property (as defined in paragraph (g)(3) of this section). Section 907(c)(2)(E) with regard to FORI and this paragraph (g) with regard to both FORI and FOGEL do not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (g)(4) of this section) has FOGEL described in paragraph (b) of this section (other than paragraph (b)(4) of this section relating to directly related income) or FORI described in paragraph (d) of this section (other than paragraph (d)(7) of this section relating to directly related income), or

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property described in paragraph (g) (2) and (3) of this section, respectively, is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Paragraph (g)(1)(ii) of this section will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEL and FORI (as both are described in paragraph (g)(1)(i) of this section).

A person described in paragraph (g)(1) (i) or (ii) of this section will, however, have directly related services income which is FOGEL if the income is so classified by reason of the income based on output test set forth in paragraph (g)(2)(i)(B) of this section.

(2) *Directly related services*—(i) *FOGEL.* (A) Income from directly related services will be FOGEL, as that term is defined in paragraph (b) (1) and (3) of this section, if those services are directly related to the active conduct of extraction (including exploration) of minerals from oil and gas wells. Paragraph (b)(1) of this section provides that, in order to have extraction income, a person must have an economic interest in the minerals in place. However, paragraph (b)(3) of this section recognizes that income arising from "other circumstances" is extraction income if that income is in substance attributable to the extraction of minerals.

(B) An example of "other circumstances" under paragraph (b)(3) of this section is the "income based on output test." This income based on output test provides that, if the amount of compensation paid or credited to a person for services is dependent on the amount of minerals discovered or extracted, the income of the person from the performance of the services will be directly related services income which is FOGEL. This test will apply whether or not the person performing the services has, or had, an economic interest in the minerals discovered or extracted.

(ii) *FORI.* With regard to the determination of directly related services income which is FORI, directly related services are those services directly related to the active conduct of the operations described in section 907(c)(2) (A) through (C). Those services include, for example, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954-6(d) (other than § 1.954-6(d)(4) which relate to foreign base company shipping income).

(iii) *Recipient of the services.* Directly related services described in paragraph (g)(2) (i) and (ii) of this section may be performed for any person without regard to whether that person is a related person.

(iv) *Excluded services*—(A) *FOGEL.* Directly related services which produce FOGEL do not include insurance, accounting or managerial services.

(B) *FORI.* Directly related services which produce FORI do not, generally, include insurance, accounting or managerial services. These services will, however, produce FORI if they are performed by the person performing the operations described in section 907(c)(2) (A) through (C). For these purposes, insurance income which is FORI means

taxable income as defined in section 832(a).

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907(c)(1)(A) or (c)(2)(A) through (C). The leases or licenses described in this paragraph (g)(3) include, for example, a lease of a means of transportation under a bareboat charter hire, of drilling equipment used in extraction operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (g)(3) applies without regard to whether the parties are related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (g) if that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "controlled foreign corporation") or that person is a partnership or partner described in section 707(b)(1).

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation for the purpose of applying the gross-income rules in paragraph (g)(1)(ii) and (iii) of this section.

(h) *Coordination with other provisions—(1) Certain adjustments.* The character of income as FOGEI or FORI is determined before making any adjustment under section 482 or section 907(d). For example, assume that X and Y are related parties, Y's only income is from the sale of oil that Y purchased from X, and FOGEI from X is diverted to Y through an arrangement described in paragraph (b)(3) of this section. Accordingly, Y has FOGEI. If under section 482 the Commissioner reallocates the FOGEI from Y to X, then Y's remaining income represents only a profit from distributing the oil, and thus is FORI. If the foreign taxes paid by Y on this income are otherwise creditable under section 901, the foreign taxes that are not refunded to Y retain their characterization as FOGEI taxes.

(2) *Section 901(f).* Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907. Taxes disallowed by section 901(f) are added to the cost or inventory amount of oil or gas.

§ 1.907(c)-2 Section 907(c)(3) Items (for taxable years beginning after December 31, 1982).

(a) *Scope.* This section provides rules relating to certain items listed in section 907(c)(3). The rules of this section are expressed in terms of FORI but apply for determining FOGEI by substituting "FOGEI" for "FORI" whenever appropriate. FOGEI does not include interest described in section 907(c)(3)(A). Dividends paid prior to January 1, 1987, and described in section 907(c)(3)(B), as in effect prior to amendment by the Technical and Miscellaneous Revenue Act of 1988, are included in FORI and not FOGEI.

(b) *Dividend—(1) Section 1248 dividend.* A section 1248 dividend is a dividend described in section 907(c)(3)(A). Except as otherwise provided in this paragraph (b)(1), gain (or loss) from the disposition of stock in any corporation is not FOGEI or FORI. See § 1.907(c)-1(e) (3) and (4).

(2) *Section 78 dividend.* A section 78 dividend is FORI to the extent it arises from a dividend described in section 907(c)(3)(A), or an amount described in section 907(c)(3)(C).

(c) *Taxes deemed paid—(1) Voting stock test.* Items described in section 907(c)(3)(A) or (C) are FORI only if a deemed-paid-tax test is met under the criteria of section 902 or 960. The purpose of this test is to require minimum direct or indirect ownership by a domestic corporation in the voting stock of a foreign corporation as a prerequisite for the item to qualify as FORI in the hands of the domestic corporation. The test is whether a domestic corporation would be deemed to pay any taxes of a foreign corporation when a dividend or an amount described in section 907(c)(3)(A) or (C), respectively, is included in the domestic corporation's gross income. In the case of interest described in section 907(c)(3)(A), the test is whether any taxes would be deemed paid if there were a hypothetical dividend.

(2) *Dividends and interest.* For purposes of section 907(c)(3)(A), a domestic corporation is deemed under section 902 to pay taxes in respect of dividends and interest received from a foreign corporation whether or not the foreign corporation:

(i) Actually pays or is deemed to pay taxes, or

(ii) In the case of interest, actually pays dividends.

This paragraph (c)(2) also applies to dividends received by a foreign corporation from a second-tier or third-tier foreign corporation (as defined in § 1.902-1(a) (3)(i) and (4), respectively).

In the case of interest received by a foreign corporation from another foreign corporation, this paragraph (c)(2) applies if the taxes of both foreign corporations would be deemed paid under section 902 (a) or (b) for purposes of applying section 902(a) to the same taxpayer which is a domestic corporation. In the case of interest received by any corporation (whether foreign or domestic), all members of an affiliated group filing a consolidated return will be treated as the same taxpayer under section 907(c)(3)(A) if the foreign taxes of the payor and (if the recipient is a foreign corporation) the foreign taxes of the recipient would be deemed paid under section 902 by at least one member. The term "member" is defined in § 1.1502-1(b). Thus, for example, assume that P owns all of the stock of D1 and D2 and P, D1, and D2 are members of an affiliated group filing a consolidated return. Assume further that D1 owns all of the stock of F1 and D2 owns all of the stock of F2, where F1 and F2 are foreign corporations. Interest paid by F1 to P, D2, or F2 may be FORI.

(3) *Amounts included under section 951(a).* For purposes of section 907(c)(3)(C), a domestic corporation is deemed under section 960 to pay taxes in respect of a foreign corporation, whether or not the foreign corporation actually pays taxes on the amounts included in gross income under section 951(a).

(d) *Amount attributable to certain items—(1) Certain dividends—(i) General rule.* The portion of a dividend described in section 907(c)(3)(A) that is FORI equals—

Amount of dividend \times a/b

a = FORI accumulated profits in excess of FORI taxes paid or accrued, and

b = Total accumulated profits in excess of total foreign taxes paid or accrued.

This paragraph (d)(1)(i) applies even though the FORI accumulated profits arose in a taxable year of a foreign corporation beginning before January 1, 1983. Determination of the FORI amount of dividends under this paragraph (d)(1)(i) must be made separately for FORI accumulated profits and total accumulated profits that arose in taxable years beginning before January 1, 1987, and for FORI accumulated profits and total accumulated profits that arose in taxable years beginning after December 31, 1986. Dividends are deemed to be paid first out of FORI and total accumulated profits that arose in taxable years beginning after December 31, 1986. With regard to FORI accumulated profits and total accumulated profits that arose in taxable years beginning

after December 31, 1986, the portion of a dividend that is FORI equals—

Amount of dividend \times a/b

a = Post-1986 undistributed FORI earnings determined under the principles of section 902(c)(1), and

b = Post-1986 undistributed earnings determined under the principles of section 902(c)(1).

(ii) *Cross-references.* See § 1.902-1(g) for the determination of a foreign corporation's earnings and profits and of those out of which a dividend is paid. See § 1.1248-2 or 1.1248-3 for the determination of the earnings and profits attributable to the sale or exchange of stock in certain foreign corporations.

(2) *Interest received from certain foreign corporations.* Interest described in section 907(c)(3)(A) is FORI to the extent the corresponding interest expense of the paying corporation is properly allocable and apportionable to the gross income of the paying corporation that would be FORI were that corporation a domestic corporation. This allocation and apportionment is made in a manner consistent with the rules of section 954(b)(5) and § 1.861-8(e)(2).

(3) *Dividends from domestic corporation.* The amount of a dividend from a corporation described in section 907(c)(3)(B), as in effect prior to amendment by the Technical and Miscellaneous Revenue Act of 1988, paid in a taxable year of that corporation beginning before December 31, 1986, that is FORI is determined under the principles of paragraph (d)(1)(i) of this section with respect to its current earnings and profits under section 316(a)(2) or its accumulated earnings and profits under section 316(a)(1), as the case may be.

(4) *Amounts with respect to which taxes are deemed paid under section 906(a)—(i) Portion attributable to FORI.* The portion of an amount described in section 907(c)(3)(C) that is FORI equals:

$A \times B/C$

A = Amount described in section 907(c)(3)(C)

B = FORI earnings and profits

C = Total earnings and profits

For taxable years ending after January 23, 1989, the facts and circumstances will be used to determine what part of the amount of the section 907(c)(3)(C) amount is directly attributable to FOGEI, FORI and other income.

(ii) *Earnings and profits.* Total earnings and profits are those of the foreign corporation for a taxable year under section 964 and the regulations under that section.

(5) *Section 78 dividend.* The portion of a section 78 dividend that will be considered FORI will equal the amount of taxes deemed paid under either section 902(a) or section 960(a)(1) with respect to the dividend to the extent the taxes deemed paid are FORI taxes under § 1.907(c)-3 (b) or (c). See § 1.907(c)-3(a)(1).

(6) *Special rule.* (i) No item in the formula described in paragraph (d)(1)(i) of this section includes amounts excluded from the gross income of a United States shareholder under section 959(a)(1).

(ii) With respect to a foreign corporation, earnings and profits in the formula described in paragraph (d)(4)(i) of this section do not include amounts excluded under section 959(b) from its gross income.

(7) *Deficits—(i) Allocation of deficits within a separate category.* In a taxable year in which a foreign corporation described in section 907(c)(3)(A) pays a dividend or has income that is subject to inclusion under section 951, if the foreign corporation has positive post-1986 undistributed earnings in a separate category but within that separate category there is a deficit in post-1986 undistributed earnings attributable to earnings other than FOGEI and FORI, that deficit shall be allocated ratably between the FOGEI and FORI post-1986 undistributed earnings within that separate category. Any deficit in post-1986 undistributed earnings attributable to either FOGEI or FORI shall be allocated first to FOGEI or FORI post-1986 undistributed earnings (as the case may be) to the extent thereof. Post-1986 undistributed FORI earnings are the post-1986 undistributed earnings (as defined in section 902 and the regulations under that section) attributable to FORI as defined in section 907(c) (2) and (3). Post-1986 undistributed FOGEI earnings are the post-1986 undistributed earnings (as defined in section 902 and the regulations under that section) attributable to FOGEI as defined in section 907(c) (1) and (3).

Example. Foreign corporation X for years 1987 and 1988 had the following undistributed earnings (none of which is income that is subject to inclusion under section 951) and foreign taxes:

| | Earnings | Taxes |
|-------------|----------|-------|
| FOGEI | \$800 | \$400 |
| FORI | (750) | |
| Other | 700 | 250 |
| Total | \$750 | \$650 |

On December 31, 1988, X paid a dividend of all of its post-1986 undistributed earnings to its sole shareholder Y. Under paragraph (d)(5) and (7)(i) of this section, and § 1.907 (c)-2 (d)(5), \$450 of Y's dividend is attributable to FOGEI (\$50 from undistributed earnings plus a \$400 section 78 dividend) and \$950 is attributable to other earnings (\$700 from undistributed earnings plus a \$250 section 78 dividend).

(ii) *Deficits allocated among separate categories.* If a deficit in a separate category ("first separate category") is allocated to another separate category ("second separate category") under sections 902 and 960 pursuant to notice 88-71, 1988-2 CB 374 and the regulations under those sections, the following rules shall apply. Any deficit in post-1986 undistributed earnings attributable to either FOGEI (or FORI) from the first separate category shall be allocated to post-1986 undistributed earnings in the second separate category to the extent thereof in the following order:

- (A) FOGEI (or FORI),
- (B) FORI (or FOGEI), and
- (C) Other income.

Any deficit in post-1986 undistributed earnings attributable to other income from the first separate category shall be allocated first to other post-1986 undistributed earnings and then ratably to FOGEI and FORI post-1986 undistributed earnings in the second separate category.

(iii) *Pre-1987 deficits.* The amount of a dividend paid by a foreign corporation described in section 907(c)(3)(A) out of positive pre-1987 earnings that is attributable to FOGEI and FORI shall be determined in a manner similar to that used in paragraph (d)(7) (i) and (ii) of this section except that the determinations shall be made on an annual basis.

(8) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples.

Example 1. X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation also organized in country S. Each corporation uses the calendar year as its taxable year. In 1983, Z has \$150 of FOGEI earnings and profits and \$250 of earnings and profits other than FOGEI or FORI. Assume that Z paid no taxes to S and X must include \$100 in its gross income under section 951(a) with respect to Z. Under paragraph (d)(4)(i) of this section, \$37.50 of the amount described in section 951(a) is FOGEI (\$100 \times \$150/\$400). The remaining \$62.50 of the section 951(a) amount represents other income.

Example 2. Assume the same facts as in Example 1 except that the taxable year in question is 1988. In addition, under the facts and circumstances, it is determined that of the \$100 section 951(a) amount included in

X's gross income, \$30 is directly attributable to Z's FOGEI activity, \$60 is directly attributable to Z's FORI activity and \$10 is directly attributable to Z's other activity. Accordingly, under paragraph (d)(4)(i), \$30 will be FOGEI and \$60 will be FORI to X.

Example 3. (i) Assume the same facts as in **Example 1.** Assume further that, in 1983, Z distributes its entire earnings and profits (\$400) to Y which consists of a dividend of \$300 and a section 959(a)(1) distribution of \$100. Y has no other earnings and profits during 1983. Assume that the dividend and distribution are not foreign personal holding company income under section 954(c). Y pays no taxes to S. In 1983, Y distributes its entire earnings and profits to X.

(ii) Under paragraphs (c)(2) and (d)(1)(i) of this section, Y has FOGEI of \$112.50, i.e., the amount of the dividend received by Y (\$300) multiplied by the fraction described in paragraph (d)(1)(i). The numerator of the fraction is Z's FOGEI accumulated profits in excess of the FOGEI taxes paid (\$112.50) and the denominator is Z's total accumulated profits in excess of total foreign taxes paid (\$400) minus the amount excluded from Y's gross income under section 959(a)(1) (\$100). The rule of paragraph (d)(6)(ii) of this section does not apply since X does not include any amount in its gross income under section 951(a) with respect to Y. If Y paid taxes to S, this paragraph (d) would apply to characterize those taxes as FOGEI taxes or other taxes. See § 1.907(c)-3(a)(8) and **Example 2** (iii) under § 1.907(c)-3(e).

(iii) The distribution from Y to X is a dividend to the extent of \$300, i.e., the amount of the distribution (\$400) minus the amount excluded from X's gross income under section 959(a)(1) (\$100). Under paragraphs (d)(1)(i) and (6)(i) of this section, \$112.50 of the dividend is FOGEI, i.e., the amount of the dividend (\$300) multiplied by a fraction. The numerator of the fraction is \$112.50, i.e., the FOGEI accumulated profits of Y in excess of FOGEI taxes paid (\$150) minus the FOGEI accumulated profits of Y in excess of FOGEI taxes paid excluded from X's gross income under section 959(a)(1) (\$37.50). The denominator of the fraction is \$300, i.e., the total accumulated profits of Y in excess of taxes paid (\$400) minus the amount excluded from X's gross income under section 959(a)(1) (\$100).

Example 4. Assume the same facts as in **Example 1** with the following modifications: In 1983, Z's only earnings and profits are FORI earnings and profits which are included in X's gross income under section 951(a). Z distributes its entire earnings and profits to Y. In 1983, Y has total earnings and profits of \$100 without regard to the dividend from Z, \$60 of which are FORI earnings and profits. Y also has \$40 which is included in X's gross income under section 951(a). Under paragraph (d)(6)(ii) of this section, the dividend from Z is disregarded for purposes of applying paragraph (d)(4)(i) of this section to the \$40 included in X's gross income under section 951(a) with respect to Y. Accordingly, \$24 of the amount described in section 951(a) is FORI (\$40 × \$60/\$100). Had these circumstances existed in 1988, and if the \$40 included in X's gross income under section 951(a) was directly attributable to FORI

activity, all of that income would be FORI to X.

(e) *Dividends, interest, and other amounts from sources within a possession.* FORI includes the items listed in sections 907(c)(3) (A) and (C) to the extent attributable to FORI of a corporation that is created or organized in or under the laws of a possession of the United States.

(f) *Income from partnerships, trusts, etc.* FORI and FOGEI include a person's distributive share (determined under the principles of section 704) of the income of any partnership and amounts included in income under subchapter J of chapter 1 of the Code (relating to the taxation of trusts, estates, and beneficiaries) to the extent the income and amounts are attributable to FORI and FOGEI. For taxable years beginning after 1986, the principles of §§ 1.904-5 (h) and (i) shall be applied to determine whether (and to what extent) a person's distributive share is FORI and FOGEI. Thus, for example, a less-than-10 percent corporate partner's share of income of the partnership would generally be treated as passive income to the partner, and not as FORI or FOGEI, unless an exception under §§ 1.904-5 (h) and (i) applies.

§ 1.907(c)-3 FOGEI and FORI taxes (for taxable years beginning after December 31, 1982).

(a) *Tax characterization, allocation and apportionment—(1) Scope.*

Paragraphs (a) (2) through (6) of this section provides rules for the characterization, allocation, and apportionment of the income taxes (other than withholding taxes) paid or accrued to a foreign country among FOGEI, FORI, and other income relevant for purposes of sections 907 and 904. Some of the rules in this section are expressed in terms of FOGEI taxes but they apply to FORI taxes by substituting "FORI taxes" for "FOGEI taxes" whenever appropriate. For the treatment of withholding taxes, see paragraph (a)(8) of this section. FOGEI taxes are determined without any reduction under section 907(a). In addition, determination of FOGEI taxes will not be affected by recharacterization of FOGEI by section 907(c)(4). See § 1.907(c)-1(c)(5). Foreign taxes will not be characterized as creditable FORI taxes if section 907(b) and § 1.907(b)-1 apply.

(2) *Three classes of income.* There are three classes of income: FOGEI, FORI, and other income.

(3) *More than one class in a foreign tax base.* If more than one class of income is taxed under one tax base under the law of a foreign country, the

amount of pre-credit foreign tax for each base must be determined. This amount is the foreign taxes paid or accrued to that country for the base as increased by the tax credits (if any) which reduced those taxes and were allowed in the country for that tax. More than one class of income is taxed under the same base, if, under a foreign country's law, deductions from one class of income may reduce the income of any other class and the classes are subject to foreign tax at the same rates.

(4) *Allocation of tax within a base.* If more than one class of income is taxed under the same base under a foreign country's law, the pre-credit foreign tax for the base is apportioned to each class of income in proportion to the income of each class. Tax credits are then allocated (under paragraph (a)(6) of this section) to the apportioned pre-credit tax. Income of a class over the deductions allowed under foreign law for, and which are attributable to, that class.

(5) *Modified gross income.* Modified gross income is not necessarily the same as gross income as defined for purposes of chapter 1 of the Internal Revenue Code. Modified gross income is determined with reference to the foreign tax base for gross income (or its equivalent). However, the characterization of the base as a particular class of income is governed by general principles of U.S. tax law. Thus, for example—

(i) Gross income from extraction is the fair market value of oil or gas in the immediate vicinity of the well (as determined under § 1.907(c)-1(b)(6) (without any deductions)).

(ii) Whether cost of goods sold (or any other deduction) is a deduction from modified gross income and the amount of such a deduction is determined under foreign law.

(iii) Modified gross income includes items that are part of the foreign tax base even though they are not gross income under U.S. law so long as the foreign taxes paid on the base constitute creditable taxes under section 901 (including taxes described in section 903). For example, if a foreign country imposes a tax (creditable under section 901) on a tax base that includes in small part a percentage of the value of a company's oil reserves in place, modified gross income from extraction includes such a percentage of value solely for purposes of making the tax allocation in paragraph (a)(4) of this section.

(iv) Modified gross income from extraction is increased for purposes of this paragraph (a)(5) by the entire

excess of the posted price over fair market value if the foreign country uses a posted price system or other pricing arrangement described in section 907(d) in imposing its income tax.

(v) Modified gross income from FORI is that income attributable to the activities in sections 907(c)(2) (A) through (C) and (E).

(vi) Modified gross income for any class may not include gross income that is not subject to taxation by the foreign country.

(6) *Allocation of tax credits.* The foreign taxes paid or accrued on a particular class of income equals the precredit tax on the class reduced (but not below zero) by the credits allowed under foreign law against the foreign tax on the particular class. Any tax credit attributable to a class that is not allocated to that class is allocated to the other class in the base or, if there are three classes in the base, is apportioned ratably among the taxes paid or accrued on the other two classes (as reduced in accordance with the preceding sentence).

(7) *Withholding taxes.* Paragraph (a) (2) through (6) of this section does not apply to withholding taxes imposed by a foreign country. FOGEI taxes may include withholding taxes imposed with respect to a distribution from a corporation. The portion of the total withholding taxes on a distribution that constitutes FOGEI taxes is determined by the portion of the distribution that is FOGEI. In addition, FOGEI taxes may include taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b). The portion of the total withholding taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b) is determined by reference to the portion of the amount included in gross income under section 951(a) that was FOGEI.

(b) *Dividends—In general.*—(i) FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the dividend multiplied by the fraction:

FOGEI taxes paid or accrued by the payor/
Total foreign taxes paid or accrued by the payor.

(ii) With regard to dividends received in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the portion of the dividend within a separate category multiplied by the fraction:

Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category

Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.

(iii) This paragraph (b) applies to a dividend described in section 907(c)(3)(A) (including a section 1248 dividend) with reference to the particular taxable year or years of those accumulated profits out of which a dividend is paid. Determination of FOGEI taxes under this paragraph (b) must be made separately.

(A) For FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning before January 1, 1987, to which paragraph (b)(1)(i) of this section applies, and

(B) For FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning after December 31, 1986, to which paragraph (b)(1)(ii) of this section applies.

For purposes of these determinations, dividends are deemed to be paid first out of FOGEI and total accumulated profits that arose in taxable years beginning after December 31, 1986. See § 1.907(c)-2(d)(1)(i). See section 960(a)(3) and § 1.960-2 relating to distributions that are treated as dividends for purposes of section 902.

(2) *Section 78 dividend.* There are no FOGEI taxes with respect to section 78 dividends.

(c) *Includable amounts under section 951(a).* (1) FOGEI taxes deemed paid with respect to an amount includable in gross income under section 951(a) equal the total taxes deemed paid with respect to that amount multiplied by the fraction:

FOGEI taxes paid or accrued by the foreign corporation

Total foreign taxes paid or accrued by the foreign corporation.

(2) With regard to an amount includable in gross income under section 951(a) in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to that amount equal the total taxes deemed paid with respect to that amount within a separate category multiplied by the fraction:

Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category

Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.

Taxes in the fraction in this paragraph (c)(2) include only those foreign taxes that may be deemed paid under section 960(a) by reason of such inclusion. See §§ 1.960-1(c)(3) and 1.960-2(c).

(d) *Partnerships.* A partner's distributive share of the partnership's FOGEI taxes is determined under the principles of section 704.

(e) *Illustrations.* The application of this section may be illustrated by the following examples.

Example 1. X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation organized in country T. Each corporation used the calendar year as its taxable year. In 1983, X includes in its gross income an amount described in section 951(a) with respect to Z. Assume that the taxes deemed paid under section 902(a) by X by reason of such an inclusion is \$70. Assume further that Z paid total taxes of \$120, \$80 of which is FOGEI tax. Under paragraph (c) of this section, the FOGEI tax deemed paid is \$46.67 (i.e., \$70 x \$80/\$120). This \$46.67 is also FOGEI under § 1.907(c)-2(d)(5) because it must be included in X's gross income under section 78.

Example 2. (i) Assume the same facts as in Example 1. Assume further that in 1983, Z distributes its entire earnings and profits to Y. Y has no earnings and profits during 1983 other than this dividend. Y paid a tax of \$50 to S. Assume that Y is deemed under section 902(b)(1) to pay \$50 of the tax paid by Z which was not deemed paid by X under section 960(a)(1) in 1983. In 1983, Y distributes its entire earnings and profits to X. Assume that X is deemed under section 902(a) to pay \$100 of the taxes actually paid, and deemed paid, by Y.

(ii) Paragraph (b)(1) of this section applies to characterize the \$50 tax of Z that Y is deemed to pay under section 902(b)(1). Y is deemed to pay \$33.33 of FOGEI tax, i.e., the amount of the tax deemed paid by Y (\$50) multiplied by a fraction. The numerator of the fraction is the amount of Z's FOGEI tax (\$80) and the denominator is the total taxes paid by Z (\$120).

(iii) Under paragraph (a)(8) of this section, a portion of the \$50 tax actually paid by Y on the earnings and profits received from Z is FOGEI tax. The amount of tax actually paid by Y that is FOGEI tax depends on the amount of the distribution from Z that is FOGEI (see § 1.907(c)-2(d)(1) (i) and Example 2 (ii) under § 1.907(c)-2(d)(8)). This result does not depend upon whether a portion of the distribution from Z is described in section 959(b) and it follows even though a portion of Y's earnings and profits will be excluded

from X's gross income under section 959(a)(1) when distributed by Y. Assume that \$12.50 of the \$50 tax actually paid by Y is FOGEI tax.

(iv) Under paragraph (b)(1) of this section, X is deemed to pay \$45.83 of FOGEI tax by reason of the distribution from Y. This amount is determined by multiplying the total taxes deemed paid by X by reason of such distribution (\$100) by a fraction. The numerator of the fraction is the FOGEI tax paid, and deemed paid, by Y (\$45.83, i.e., \$33.33 under paragraph (ii) of this example plus \$12.50 under paragraph (iii) of this example). The denominator of the fraction is the total taxes paid, and deemed paid, by Y (\$100). This \$45.83 is FOGEI under § 1.907(c)-2(d)(5) because it is included in X's gross income as a section 78 dividend.

Example 3. (i) X, a domestic corporation, has a concession with foreign country Y that gives it the exclusive right to extract and export the crude oil and natural gas owned by Y. The concession agreement and location of the oil and gas wells mandate that X construct a system of pipelines to transport the minerals that are extracted to a port where they are loaded onto tankers for export. X owns the transportation facilities. Y has an income tax system under which income from mineral operations is subject to a 50 percent tax rate. The taxation by Y of the mineral operations is a separate tax base under paragraph (a)(3) of this section. Under this system, Y imposes the tax at the port prior to export and it establishes a posted price of \$12 per barrel. Y also collects royalties of \$1.44 per barrel (i.e., 12 percent of this posted price) which is deductible in computing the petroleum tax. Y also allows X deductible lifting costs of \$.20 per barrel and deductible transporting costs of \$.80 per barrel. Y does not allow any credits against the mineral tax. Assume that X does not have any income in Y other than the mineral income. (In 1983, X extracts, transports, and exports 10,000,000 barrels of crude oil, but for convenience, all computations are in terms of one barrel). X pays foreign taxes of \$4.78 per barrel, computed as follows:

| | |
|-------------------|--------------------|
| Sales..... | \$12.00 |
| Royalties..... | \$1.44 |
| Lifting..... | .20 |
| Transporting..... | .80 |
| | <u>2.44</u> (2.44) |

| | |
|-------------------------|------|
| Income base..... | 9.56 |
| Tax rate (percent)..... | .50 |
| Tax..... | 4.78 |

Assume that these taxes are creditable taxes under section 901, that the fair market value of the oil at the port is \$10 per barrel, and that under § 1.907(c)-1(b)(6) fair market value in the immediate vicinity of the oil wells is \$9 per barrel. Thus, at the port, the excess of posted price (\$12) over fair market value (\$10) is \$2.

(ii) The \$4.78 foreign tax paid to Y is allocated to FOGEI and FORI in accordance with the rules in paragraph (a)(2) through (5) of this section.

(iii) Under paragraph (a)(3) of this section, FOGEI and FORI are subject to foreign taxation under one tax base. This foreign tax

is allocated between FOGEI tax and FORI tax in accordance with paragraph (a)(4) and (5) of this section.

(iv) The modified gross income for FOGEI is \$11, i.e., fair market value in the immediate vicinity of the well (\$9) plus the excess at the port of posted price over fair market value (\$2). The modified gross income for FORI is \$1, i.e., value added to the oil beyond the well-head which is part of Y's tax base (\$10-\$9).

(v) The royalty deductions are all directly attributable to FOGEI.

(vi) Under paragraph (a)(4) of this section, the income of each class is determined as follows:

| | FOGEI | FORI |
|----------------------------|---------|--------|
| Modified gross income..... | \$11.00 | \$1.00 |
| Deductions: | | |
| Royalties..... | 1.44 | 0 |
| Lifting..... | .20 | 0 |
| Transporting..... | 0 | .80 |
| Total..... | 1.64 | .80 |
| Net Income..... | 9.36 | .20 |

(vii) Under paragraph (a)(4) of this section, the total tax paid to Y is allocated to FOGEI and FORI in proportion to the income in each class. The calculation is as follows:

FOGEI tax = \$4.78 × \$9.36 / \$9.56 = \$4.68

FORI tax = \$4.78 × \$0.20 / \$9.56 = \$0.10

Thus, for the 10,000,000 barrels, the FOGEI tax is \$46,800,000 and the FORI tax is \$1,000,000.

(viii) The allocation under paragraph (a)(4) of this section, rather than the direct application of stated foreign tax rates to foreign-law taxable income in each class of income (which would produce the same results in the facts of this example), is necessary when a foreign country taxes more than one class of income under a progressive rate structure. See Example 4 in this paragraph (e).

Example 4. Assume the same facts as in Example 3 except that Y's tax is imposed at 40 percent for the first \$20,000,000 of income and at 60 percent for all other income. The foreign taxes are allocated under paragraph (a)(4) of this section between FOGEI and FORI in the same manner as in paragraphs (vi) and (vii) of Example 3, as follows:

| | |
|------------------------------------|--------------|
| (1) Taxable income..... | \$95,600,000 |
| (2) Tax: | |
| (a) 40% of \$20,000,000..... | 8,000,000 |
| (b) 60% of \$75,600,000..... | 45,360,000 |
| (c) Total tax..... | 53,360,000 |
| (3) FOGEI tax (line | |
| 2(c) × \$9.36 / \$9.56)..... | 52,243,680 |
| (4) FORI tax (line 2(c) × \$0.20 / | |
| \$9.56)..... | 1,116,320 |

Example 5. Assume the same facts as in Example 3. Assume further that X refines the crude oil into primary products prior to export and Y imposes its tax on the basis of crude oil equivalences of \$12 per barrel, rather than the value of the primary products, to establish port prices. Assume that this arrangement is a pricing arrangement described in section 907(d). Thus, Y does not

tax the refinery income. The results are the same as in Example 3 even if \$12 per barrel is equal to, more than, or less than, the value of the primary products at the port. See paragraph (a)(5)(vi) of this section.

§ 1.907(d)-1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).

(a) *In general.*—(1) *Scope.* Section 907(d) applies if a person has FOGEI from the—

(i) Acquisition (other than from a foreign government) or

(ii) Disposition of minerals at a posted price that differs from the fair market value at the time of the transaction. Also, if a seller (other than a foreign government) derives FOGEI upon a disposition described in the preceding sentence, section 907(d) applies to the acquisition by the purchaser whether or not the purchaser has FOGEI. Thus, section 907(d) may apply in determining a person's FORI.

(2) *Initial computation requirement.* If section 907(d) applies to any person, income on the transaction as initially reflected on the person's return shall be computed as if the transaction were effected at fair market value. This requirement applies the first time a person has taxable income derived from either the transaction or an item (such as a dividend described in section 907(c)(3)(A)) determined with reference to that income.

(3) *Burden of proof.* The taxpayer must be able to demonstrate the transaction as it actually occurred and the basis for reporting the transaction under the principles of paragraph (a)(2) of this section.

(4) *Related parties.* Section 907(d) (as a rule of characterization) applies whether or not the parties to the transaction are related. Thus, the excess of the posted price over the fair market value may never be taken into account in determining a person's FOGEI under section 907(a) but may be taken into account in determining a person's FORI.

(b) *Adjustments.* If a taxpayer does not comply with the initial requirement of paragraph (a)(2) of this section, adjustments under section 907(d) may be made only by the Commissioner in the same manner that section 482 is administered. Correlative and similar adjustments consistent with the substantive and procedural principles of section 482 and § 1.482-1(d) apply. However, section 907(d) is not a limitation on section 482. If a taxpayer disposing of minerals at a posted price does comply with the initial computation requirement of this section, adjustments and correlative and similar

adjustments consistent with the substantive and procedural aspects of section 482 and § 1.482-1(d) shall apply, whether made on the return by the taxpayer or on a later audit. This paragraph (b) does not apply to an actual sale or exchange of minerals made between persons with respect to whom adjustments under section 482 would never apply (but see paragraph (a)(4) of this section).

(c) *Definitions.* For purposes of this section—

(1) *Foreign government.* The term *foreign government* means only the integral parts or controlled entities of a foreign sovereign and political subdivisions of a foreign country.

(2) *Minerals.* The term *minerals* has the same meaning as in § 1.907(c)-1(f)(1).

(3) *Posted price.* The term *posted price* means the price set by, or at the direction of, a foreign government to calculate income for purposes of its tax or at which minerals must be sold.

(4) *Other pricing arrangement.* The term *other pricing arrangement* in section 907(d) means a pricing arrangement having the effect of a posted price.

(5) *Fair market value.* The term *fair market value*, whether or not at the port prior to export, is determined in the same way that the wellhead price is determined under § 1.907(c)-1(b)(6).

§ 1.907(e)-1 Transitional rules for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982.

(a) *General Rule.* Section 907(e)(1) provides rules for carryovers of FOGEI and FORI taxes from taxable years beginning before January 1, 1983 (the general effective date of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)), to taxable years beginning after December 31, 1982. Section 907(e)(2) provides for carrybacks of these taxes from taxable years beginning after December 31, 1982, to taxable years beginning before January 1, 1983. Both the carryover and carryback amounts shall not exceed the lesser of the amount deemed paid or accrued which would have been deemed paid or accrued under the carryback and carryover rules of section 907(f) and § 1.907(f)-1 (covering carryback and carryover of taxes that both begin after December 31, 1982) or the amount which would have been deemed paid or accrued if—

(1) Pre-TEFRA section 907(b) (which provided for a separate section 904 limitation for FORI taxes),

(2) Pre-TEFRA section 907(f) (which limited the carryback and carryover of FOGEI taxes to 2% of FOGEI for the year of origin), and

(3) Pre-TEFRA section 904(f)(4) (which dealt with the determination of foreign oil related loss if section 907 applied) had remained in effect for taxable years beginning after December 31, 1982.

(b) *Rules for carryover of FORI and pre-TEFRA non-FORI taxes.*—(1) Under this section, in general—

(i) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any carryover year may not exceed the excess section 907(b) limitation, as in effect prior to the general effective date of TEFRA, for that carryover year;

(ii) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any carryover year may not exceed the excess section 904(d) general limitation, as in effect before the general effective date of TEFRA for that carryover year; and

(iii) The total of the amounts carried forward under paragraph (b)(1) (i) and (ii) of this section to any carryover year may not exceed the excess section 904(d) general limitation, as in effect after the general effective date of TEFRA, for that carryover year.

(2) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(i) of this section (if applicable).

(3) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(ii) of this section (if applicable).

(c) *Examples.* The provisions of section 907(e)(1) may be illustrated by the following examples. For purposes of these examples, assume the following:

(1) The corporation's preliminary U.S. tax liability is computed at an effective rate of 46%;

(2) A term modified by "old" refers to the meaning the term had prior to the general effective date of TEFRA;

(3) The only foreign source income which the corporation had prior to 1983 is old FORI (which included FOGEI and other FORI) and old section 904(d)(1)(C) income (i.e., income other than interest, DISC dividends and FORI); and

(4) The only foreign source income the corporation had during 1983 and 1984 was section 904(d)(1)(C) income (i.e., income other than interest and DISC

dividends) as applicable during those years.

Example 1—(i) Facts. (A) X, a calendar year U.S. corporation organized on January 1, 1982, uses the accrual method of accounting. For 1982, X had the following relevant tax items:

| | 1982 |
|--|-------|
| FOGEI | \$500 |
| FOGEI taxes | 265 |
| Section 907 (a) limitation | |
| (46% × \$500) | 230 |
| Unused FOGEI tax | 35 |
| Old section 907(b)(1) limitation: | |
| (2% × \$500) | 10 |
| Unused old section 907(b) limitation FORI taxes (not including unused FOGEI taxes) | 63 |
| Unused old section 904(d)(1)(C) taxes | 20 |

(B) X's tax items for 1983 and 1984 under the Code provisions applicable to those years were as follows:

TABLE 1

| | 1983 | 1984 |
|---|-------------------|-------------------|
| (a) FOGEI | \$1,000 | \$1,200 |
| (b) FORI | 400 | 350 |
| (c) Other foreign taxable income | 122 | 250 |
| (d) Total taxable income (domestic and foreign) | 2,000 | 2,500 |
| (e) FOGEI taxes | 750 | 500 |
| (f) FORI taxes | 140 | 62 |
| (g) Other foreign taxes | 50 | 31 |
| (h) Section 907(a) limitation (46% × (d)) | 460 | 552 |
| (i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers) | 650 | 593 |
| | ((f) + (g) + (h)) | ((e) + (f) + (g)) |
| (j) Preliminary U.S. tax (46% × (d)) | 920 | 1,150 |
| (k) Section 904(d) overall limitation ((j) × (a) + (b) + (c) ÷ (d)) | 700 | 828 |
| (l) Excess FOGEI taxes (or excess limitation) ((e) - (h)) | 290 | (52) |
| (m) Excess section 904(d) taxes (or excess limitation) ((i) - (k)) | (50) | (235) |

(C) X's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE II

| | 1983 | 1984 |
|---|---------|---------|
| (a) FOGEI..... | \$1,000 | \$1,200 |
| (b) Old FORI (less FOGEI)..... | 400 | 350 |
| (c) Other foreign taxable income..... | 122 | 250 |
| (d) Total taxable income (domestic and foreign)..... | 2,000 | 2,500 |
| (e) FOGEI taxes..... | 750 | 500 |
| (f) Old FORI taxes (less (e))..... | 140 | 62 |
| (g) Other foreign taxes..... | 50 | 31 |
| (h) Section 907(a) limitation (46% × (a))..... | 460 | 552 |
| (i) Old FORI taxes (after section 907(a) limitation excluding carryovers)..... | 600 | 562 |
| (j) Old section 904(d)(1)(C) taxes ((g))..... | 50 | 31 |
| (k) Preliminary U.S. tax (46% × (d))..... | 920 | 1,150 |
| (l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d))..... | 644 | 713 |
| (m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))..... | 56 | 115 |
| (n) Excess FOGEI taxes (or excess limitation) ((e) - (h))..... | 290 | (52) |
| (o) Excess old FORI taxes (or excess limitation) ((i) - (l))..... | (44) | (151) |
| (p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j) - (m))..... | (6) | (84) |

(ii) *Carryover from 1982 to 1983—(A) Unused FOGEI taxes.* X has \$35 of unused FOGEI taxes available for carryover from 1982. Pursuant to section 907(f)(3)(A), X must determine its section 907(f) FOGEI tax carryover (taking into account the section 907(e) transition rules) from 1982 to 1983 before it determines its section 904(c) general foreign tax carryover. In determining the carryover from 1982 to 1983, section 907(e)(1) requires that the old section 907(f)(1) limitation be applied. Under old section 907(f)(1), FOGEI taxes in excess of the section 907(a) limitation could only be carried over to succeeding years in an amount equal to 2% of the FOGEI (\$10 in this example) in the year of origin. See § 1.907(f)-1A(b)(2). The \$10 is not deemed accrued, however, in 1983 because FOGEI taxes paid or accrued in 1983 (\$750) exceed the section 907(a) limitation (\$460) for 1983 (Table I, 1983, line (1)).

(B) *Unused FORI taxes.* X has \$63 of unused old section 907(b) limitation FORI taxes available for carryover from 1982. Pursuant to section 907(e)(1), the amount of

unused FORI taxes that may be carried over from 1982 to 1983 may not exceed the excess old section 907(b) limitation for 1983. Since the excess 1983 old section 907(b) limitation is \$44 (Table II, 1983, line (o)), only that amount of the \$63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over and deemed accrued in 1983. Therefore, X has unused 1982 old section 907(b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of \$19 (\$63 less \$44) available for carryover to 1984.

(C) *Unused other foreign taxes.* X has \$20 of unused old section 904(d)(1)(C) taxes available for carryover from 1982. However, only \$6 may be deemed accrued in 1983 since for 1983 the excess old section 904(d)(1)(C) limitation was only \$6 (Table II, 1983, line (p)). Therefore, X has unused 1982 old section 904(d)(1)(C) taxes in the amount of \$14 (\$20 less \$6) available for carryover to 1984.

(iii) *Carryover from 1982 to 1984—(A) Unused FOGEI taxes.* The unused FOGEI tax carryover from 1982 of \$10 will be deemed accrued in 1984 since the limitations of both old and new section 907(f)(2) do not limit the deemed accrual. The \$10 amount is not as great as the lesser of the excess extraction limitation under new section 907(f)(2)(A), \$52 (Table I, 1984, line (1)) and the excess overall limitation under new section 907(f)(2)(B), \$235 (Table I, 1984, line (m)). Likewise, the \$10 amount is not as great as the lesser of the excess extraction limitation under old section 907(f)(2)(A), \$52 (Table II, 1984, line (n)) and the excess oil related limitation under old section 907(f)(2)(B), \$151 (Table II, 1984, line (o)).

(B) *Unused FORI taxes.* The \$29 of 1982 unused old section 907(b) limitation FORI taxes (including \$10 of unused FOGEI taxes) are deemed accrued in 1984 since they do not exceed the excess old section 907(b) limitation for 1984, \$151 (Table II, 1984, line (o)).

(C) *Unused other foreign taxes.* X's \$14 of unused 1982 old section 904(d)(1)(C) taxes are deemed accrued in 1984 since they do not exceed the old section 904(d)(1)(C) limitation, \$84 (Table II, 1984, line (p)).

Example 2—(i) Facts. Assume the same facts as in *Example 1* except that X's other foreign taxable income for 1983, line (c) in both tables in *Example 1*, is \$46. It is assumed that total taxable income remains the same as in *Example 1*.

(ii) *Carryover from 1982 to 1983—(A) Unused FOGEI taxes.* Same result as in *Example 1*. None of the \$10 of unused FOGEI taxes carried over from 1982 may be deemed accrued in 1983.

(B) *Unused FORI and other foreign taxes.* The old excess section 907(b) limitation for

1983 remains at \$44 (Table II, 1983, line (o)). There is, however, no old excess section 904(d)(1)(C) limitation for 1983 (Table II, 1983, line (p)). The tentative carryovers are therefore \$44 of FORI taxes and \$0 of section 904(d)(1)(C) taxes. In addition, the excess section 904(d) overall limitation (Table I, 1983, line (m)) is now only \$15. Accordingly, under paragraph (b)(1)(D) of this section, the maximum amount of FORI taxes and old section 904(d)(1)(C) taxes that may be carried forward to 1983 is \$15. Therefore, \$15 of the \$63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over from 1982 and deemed accrued in 1983. X has unused 1982 section 907(b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of \$48 available for carryover to 1984. X need not reduce the unused 1982 FORI taxes by the amount (\$44) which would have been deemed accrued had the old excess section 907(b) limitation applied.

Example 3—(i) Facts. (A) Y, a U.S. corporation organized on January 1, 1982, uses the accrual method of accounting and the calendar year as its taxable year. For 1982, Y had the following tax items:

Table I

| | |
|---|--------|
| (a) FOGEI..... | \$ 900 |
| (b) Old FORI (less FOGEI)..... | 250 |
| (c) Other foreign taxable income..... | 200 |
| (d) World wide taxable income..... | 2,050 |
| (e) FOGEI taxes..... | 300 |
| (f) Old FORI taxes (less (e))..... | 130 |
| (g) Other foreign taxes..... | 170 |
| (h) Section 907(a) limitation (46% × (a))..... | 414 |
| (i) Old FORI taxes (after section 907(a) limitation) (lesser of (e) or (h) plus (f))..... | 430 |
| (j) Old section 904(d)(1)(C) taxes ((g))..... | 170 |
| (k) Preliminary U.S. tax (46% × (d))..... | 943 |
| (l) Old FORI section 907 (b) limitation ((k) × (a) + (b) ÷ (d))..... | 529 |
| (m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))..... | 92 |
| (n) Excess FOGEI taxes (or excess limitation) ((e)-(h))..... | (114) |
| (o) Excess old FORI taxes (or excess limitation) ((f)-(i))..... | (99) |
| (p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j)-(m))..... | 78 |

(B) Y's tax items for 1983 and 1984 under the Code provisions applies to those years were as follows:

TABLE II

| | 1983 | 1984 |
|--|---------|---------|
| (a) FOGEI..... | \$1,000 | \$1,200 |
| (b) FORI..... | 300 | 450 |
| (c) Other foreign taxable income (loss)..... | 200 | 150 |
| (d) Total taxable income (domestic and foreign)..... | 2,200 | 2,500 |
| (e) FOGEI taxes..... | 400 | 750 |
| (f) FORI taxes..... | 180 | 290 |
| (g) Other foreign taxes..... | 60 | 90 |

TABLE II—Continued

| | 1983 | 1984 |
|---|-------------------|-------------------|
| (h) Section 907(a) limitation (46% × (a)) | 460 | 552 |
| (i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers) | 640 | 932 |
| | ((e) + (f) + (g)) | ((f) + (g) + (h)) |
| (j) Preliminary U.S. tax (46% × (d)) | 1,012 | 1,150 |
| (k) Section 904(d) overall limitation ((j) × (a) + (b) + (c) ÷ (d)) | 690 | 828 |
| (l) Excess FOGEI taxes (or excess limitation) ((e) - (h)) | (60) | 198 |
| (m) Excess section 904 taxes (or excess limitation) ((i) - (k)) | (50) | 104 |

(C) Y's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE III

| | 1983 | 1984 |
|--|-------------|-------------|
| (a) FOGEI | \$1,000 | \$1,200 |
| (b) Old FORI (less FOGEI) | 300 | 450 |
| (c) Other foreign taxable income | 200 | 150 |
| (d) Total taxable income (domestic and foreign) | 2,200 | 2,500 |
| (e) FOGEI taxes | 400 | 750 |
| (f) Old FORI taxes (less (e)) | 180 | 290 |
| (g) Other foreign taxes | 60 | 90 |
| (h) Section 907(a) limitation (46% × (a)) | 460 | 552 |
| (i) Old FORI taxes (after section 907(a) limitation excluding carryovers) | 580 | 842 |
| | ((f) + (g)) | ((f) + (h)) |
| (j) Old section 904(d)(1)(C) taxes ((g)) | 60 | 90 |
| (k) Preliminary U.S. tax (46% × (d)) | 1,012 | 1,150 |
| (l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d)) | 598 | 759 |
| (m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d)) | 92 | 69 |
| (n) Excess FOGEI taxes (or excess limitation) ((e) - (h)) | (60) | 198 |
| (o) Excess old FORI taxes (or excess limitation) ((i) - (l)) | (18) | 83 |
| (p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j) - (m)) | (32) | 21 |

(ii) *Carryover from 1982 to 1983—(A) Unused FOGEI taxes.* For 1982, Y has no unused FOGEI taxes (Table I, 1982, line (n)) since FOGEI taxes paid, \$300 (Table I, 1982, line (e)) is less than the section 907(a) limitation, \$414 (Table I, 1982, line (h)).

(B) *Unused FORI taxes.* For 1982, Y has no unused old FORI taxes (Table I, 1982, line (o)) since the old FORI section 907(b) limitation, \$529 (Table I, 1982, line (l)) exceeds old FORI taxes for 1982, \$430 (Table I, 1982, line (i)).

(C) *Unused other foreign taxes.* For 1982, Y has \$78 of unused old section 904(d)(1)(C) taxes (Table I, 1982, line (p)). The unused old section 904(d)(1)(C) taxes from 1982 are deemed accrued in 1983 only to the extent of the excess old section 904(d)(1)(C) limitation for 1983, \$32 (Table III, 1983, line (p)). Thus, \$32 of the unused old section 904(d)(1)(C) taxes for 1982 are deemed accrued in 1983 and \$46 are available for carryover to 1984.

(iii) *Carryback of unused FOGEI taxes from 1984 to 1982.* Y has \$198 of unused FOGEI taxes for 1984 (Table II, 1984, line (l)). These taxes are deemed accrued in 1982 only to the extent they would have been deemed accrued in 1982 had old section 907(f) remained in effect for 1984. Under old section 907(f), Y's carryback of unused FOGEI taxes would have been limited to \$24, 2% of its FOGEI for 1984. All of the \$24 is deemed accrued in 1982 because Y's excess section 907(a) limitation for 1982 is \$114 (Table I, line (n)) and its excess old FORI section 907(b) limitation for 1982 is \$99 (Table I, line (o)).

(iv) *Carryback of unused section 904(d)(1)(C) taxes from 1984 to 1982.* Y has \$104 of unused section 904(d)(1)(C) taxes for 1984 (Table II, 1984, line (m)). Those taxes may be carried from 1984 to 1982 but only to the extent of the amount of unused old FORI taxes and unused old section 904(d)(1)(C) taxes from 1984 that would have been deemed accrued in 1982 had old sections 907 (b) and (f) and 904(f)(4) remained in effect for 1984. The amount of unused old FORI taxes from 1984, \$83 (Table III, 1984, line (o)), that would have been deemed accrued in 1982 is \$75 the excess old FORI section 907(b) limitation for 1982, \$99 (Table I, line (o)) less \$24 of carryback of unused FOGEI taxes from paragraph (iii) of this example. Unused FOGEI taxes carried back to an excess limitation year are applied before unused other old FORI taxes. See § 1.907(b)-2A(d)(1)(ii). Although Y has \$21 of unused old section 904(d)(1)(C) taxes for 1984 (Table III, 1984, line (p)) none are deemed accrued in 1982 because there is no excess old section 904(d)(1)(C) limitation for 1982 (Table I, line (p)). Thus, only \$75 of the \$104 of unused section 904(d)(1)(C) taxes from 1984 are deemed accrued in 1982.

Example 4—(i) Facts. (A) X, a calendar year U.S. corporation, was organized on January 1, 1982. On that same day, X and Y, an unrelated foreign corporation, organized Z, a calendar year corporation, in country A. X and Y each received 50% of the stock of Z. During 1982, Z earned \$1,000 of FOGEI and \$800 of FORI. Z paid to A as taxes, \$460 on its

FOGEI and \$400 on its FORI. During 1983, Z earned \$1,000 of FOGEI and paid taxes of \$460 on that income. Z did not earn any FORI in 1983. On December 31, 1983, X made a pro rata distribution of all of its accumulated earnings and profits (\$1,480) to X and Y. X received a dividend from Z in the amount of \$740 plus a section 78 dividend amount of \$660.

(B) X's tax items for 1983 under the Code provisions applicable to those years were as follows:

TABLE I

| | |
|---|---------|
| (a) FOGEI (including section 78 dividend) | \$1,000 |
| (b) FORI (including section 78 dividend) | 400 |
| (c) Other foreign taxable income | 200 |
| (d) Total taxable income (domestic and foreign) | 2,000 |
| (e) FOGEI taxes | 460 |
| (f) FORI taxes | 200 |
| (g) Other foreign taxes | 30 |
| (h) Section 907(a) limitation (46% × (a)) | 460 |
| (i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers) ((f) + (g) + (h)) | 690 |
| (j) Preliminary U.S. Tax (46% × (d)) | 920 |
| (k) Section 904(d) overall limitation ((j) X (a) + (b) + (c) ÷ (d)) | 736 |

TABLE I—Continued

| | |
|---|------|
| (l) Excess FOGEI taxes (or excess limitation) ((e)–(h))..... | 0 |
| (m) Excess section 904(d) taxes (or excess limitation) ((i)–(k))..... | (46) |

(C) X's foreign tax items for 1983, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE II

| | |
|--|---------|
| (a) FOGEI (including section 78 dividend)..... | \$1,000 |
| (b) Old FORI (less FOGEI) (including section 78 dividend)..... | 400 |
| (c) Other foreign taxable income..... | 200 |
| (d) Total taxable income (domestic and foreign)..... | 2,000 |
| (e) FOGEI taxes..... | 460 |
| (f) Old FORI taxes (including (e))..... | 200 |
| (g) Other foreign taxes..... | 30 |
| (h) Section 907(a) limitation (465% × (a))..... | 460 |
| (i) Old FORI taxes (after section 907(a) limitation excluding carryovers) ((f) + (h))..... | 660 |
| (j) Old section 904(d)(1)(C) taxes ((g))..... | 30 |
| (k) Preliminary U.S. tax (46% × (d))..... | 920 |
| (l) Old FORI section 907(b) limitation ((k) × (a) + (b) + (d))..... | 644 |
| (m) Old section 904(d)(1)(C) limitation ((k) × (c) + (d))..... | 92 |
| (n) Excess FOGEI taxes (or excess limitation) ((e)–(h))..... | 0 |
| (o) Excess old FORI taxes (or excess limitation) ((f)–(i))..... | 16 |
| (p) Excess old section 904(d)(1)(C) taxes (or excess limitation ((j)–(m))..... | (62) |

(ii) *Application of old section 907(b) limitation.* The section 902 deemed paid credit with regard to the dividend X received in 1983 from Z was \$660 (\$460 of FOGEI taxes and \$200 of old other FORI taxes) (Table II, Line (i)). Of this amount, \$430 were old section 907(b) limitation FORI taxes from 1982 (\$230 of FOGEI taxes and \$200 of old other FORI taxes). Pursuant to section 907(e)(1), the amount of deemed paid old FORI taxes from 1982 may not exceed the old section 907(b) limitation for 1983, \$644 (Table II, Line (l)) after reduction for the old FORI taxes deemed paid from 1983, \$230 on FOGEI

earned by Z in 1983. The remainder of the limitation \$414 (\$644 less \$230) is apportioned on a pro-rata basis between the deemed paid FOGEI taxes from 1982 (\$230) and the deemed paid old other FORI taxes from 1982 (\$200). Accordingly, \$221.44 of FOGEI taxes (\$414 × \$230/\$430) and \$192.56 of old other FORI taxes (\$414 × \$200/\$430) may be deemed accrued in 1983. The remainder of the deemed paid old FORI taxes from 1982, \$8.56 of FOGEI taxes (\$230 less \$221.44) and \$7.44 of old other FORI taxes, may be carried forward and deemed accrued in 1984.

§ 1.907(f)–1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).

(a) *In general.* If a taxpayer chooses the benefits of section 901, any unused FOGEI tax paid or accrued in a taxable year beginning after December 31, 1982, may be carried to the taxable years specified in section 907(f) under the carryback and carryover principles of this section § 1.904–2(b). See section 907(e) and § 1.907(e)–1 for transitional rules that apply to unused FOGEI taxes carried back or forward between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982.

(b) *Unused FOGEI tax—(1) In general.* The “unused FOGEI tax” for purposes of this section is the excess of the FOGEI taxes for a taxable year (year of origin) over that year’s limitation level (as defined in § 1.907(a)–1(b)).

(2) *Year of origin.* The term “year of origin” in the regulations under section 904 corresponds to the term “unused credit year” under section 907(f).

(c) *Tax deemed paid or accrued.* The unused FOGEI tax from a year of origin that may be deemed paid or accrued under section 907(f) in any preceding or succeeding taxable year (“excess limitation year”) may not exceed the lesser of—

(1) The excess extraction limitation for the excess limitation year, or

(2) The excess general section 904 limitation for the excess limitation year.

(d) *Excess extraction limitation.*

Under section 907(f)(2)(A), the “excess

extraction limitation” for an excess limitation year is the amount by which that year’s section 907(a) extraction limitation exceeds the sum of—

(1) The FOGEI taxes paid or accrued, and

(2) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryback or carryover from preceding years of origin.

(e) *Excess general section 904 limitation.* Under section 907(f)(2)(B), the “excess general section 904 limitation” for an excess limitation year is the amount by which that year’s section 904 general limitation exceeds the sum of—

(1) The general limitation taxes paid or accrued (or deemed to have been paid under section 902 or 900) to all foreign countries and possessions of the United States during the taxable year,

(2) The general limitation taxes deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(3) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryover (or carryback) from preceding years of origin.

(f) *Section 907(f) priority.* If a taxable year is a year of origin under both section 907(f) and section 904(c), section 907(f) applies first. See section 907(f)(3)(A).

(g) *Cross-reference.* In computing the carryback and carryover of disallowed credits under section 907(f), the principles of § 1.904–2 (d), (e), and (f) apply.

(h) *Example.* The following example illustrates the application of section 907(f).

Example. X, a U.S. corporation organized on January 1, 1983, uses the accrual method of accounting and the calendar year as its taxable year. X's only income is income which is not subject to a separate tax limitation under section 904(d). X's preliminary U.S. tax liability indicates an effective rate of 46% for taxable years 1983–1985. X has the following foreign tax items for 1983–1985:

| | 1983 | 1984 | 1985 |
|---|----------|----------|----------|
| 1. FOGEI..... | \$15,000 | \$20,000 | \$10,000 |
| 2. FOGEI taxes..... | 7,500 | 9,200 | 4,200 |
| 3. Other foreign taxable income..... | 8,000 | 5,000 | 10,000 |
| 4. Other foreign taxes..... | 3,200 | 2,000 | 3,000 |
| 5. (a) Section 907(a) limitation (.46 × Line 1)..... | 6,900 | 9,200 | 4,600 |
| (b) General section 904 limitation (.46 × (line 1 plus line 3))..... | 10,580 | 11,500 | 9,200 |
| 6. (a) Unused FOGEI taxes (excess of line 2 over line 5(a))..... | 600 | 0 | 0 |
| (b) Unused general limitation taxes (excess of line 4 plus lesser of line 2 or line 5(a) over line 5(b))..... | 0 | 0 | 0 |
| 7. (a) FOGEI taxes from years preceding 1983 deemed accrued under section 907(f)..... | 0 | 0 | 0 |
| (b) Section 904 general limitation taxes from years preceding 1983 deemed accrued under section 904(c)..... | 0 | 0 | 0 |
| 8. (a) Excess section 907(a) limitation (excess of line 5(a) over sum of line 2 and line 7(a))..... | 0 | 0 | 400 |
| (b) Excess section 904 general limitation (excess of line 5(b) over sum of line 4, lesser of line 2 and line 5(a) and line 7(b))..... | 480 | 300 | 2,000 |
| 9. Limit on FOGEI taxes that will be deemed accrued under section 907(f) (lesser of line 8(a) and line 8(b))..... | 0 | 0 | 400 |

X has unused 1983 FOGEI taxes of \$600. Since the excess section 907(a) limitation for 1984 is zero, the unused FOGEI taxes are carried to 1985. Of the \$600 carryover, \$400 is deemed accrued in 1985 and the balance of \$200 is carried to following years (but not to a year after 1988). After the carryover from 1983 to 1985, the excess section 904 general limitation for 1985 (line 8(b)) is reduced by \$400 to \$1,600 to reflect the amount of 1983 FOGEI taxes deemed accrued in 1985 under section 907(f).

Par. 5. In § 1.907(a)-0A, paragraph (a) is revised to read as follows:

§ 1.907(a)-0A Introduction (for taxable years beginning before January 1, 1983).

(a) *Effective dates.* The provisions of §§ 1.907(a)-0A through 1.907(f)-1A apply to taxable years beginning before January 1, 1983, and all references in these regulations to section 907 are to section 907 as it existed prior to the amendments made by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 448). For provisions that apply to taxable years beginning after December 31, 1982, see §§ 1.907(a)-0 through 1.907(f)-1.

Par. 6. Section 1.907(a)-0AT is removed.

Par. 7. Section 1.907(c)-1A(d)(3) is revised to read as follows:

§ 1.907(c)-1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).

(d) *Assets used in a trade or business.*

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities. This provision applies to taxable years beginning after December 31, 1974, and beginning before January 1, 1983.

Par. 8. Section 1.907(c)-1AT is removed.

Dated: February 14, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-5583 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8340]

RIN 1545-AN24

Adjusted Current Earnings, Foreign Sales Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the alternative minimum tax for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 566-4104 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986. This Treasury Decision would conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106), and section 11301 (b) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

On May 3, 1990, the Federal Register published a notice of proposed rulemaking (55 FR 18626). A number of public comments were received and a public hearing was held on October 16, 1990. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted as revised in this Treasury Decision.

Public Comments

I. Section 1.56(g)-1(a)

Section 1.56(g)-1(a)(5) of the regulations provides that except as otherwise provided by regulations or

other guidance issued by the Internal Revenue Service, all Internal Revenue Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining adjusted current earnings (ACE). The regulations finalize § 1.56(g)-1(a)(5) without change because the Internal Revenue Service believes Congress intended that ACE (and the alternative minimum tax (AMT) in general) be a separate tax system.

The Service specifically requested comments when it published the notice of proposed rulemaking on whether the statute and the legislative history required ACE to be a separate tax system, and if so, whether there were ways in which the Service could mitigate the resulting complexity without deviating from the substantive results Congress intended. The Service received no comments on these issues.

As stated above, § 1.56(g)-1(a)(5) provides that ACE is a separate tax system except to the extent the Service provides otherwise. The Service has not expanded § 1.56(g)-1(a)(5) to include any exceptions because the Service is currently studying this and related matters. The Service again requests comments and suggestions on ways in which the Service might simplify ACE and the AMT without deviating from the results Congress intended. See, e.g., proposed § 1.56(g)-1(r) in the notice of proposed rulemaking published this day in the Federal Register.

II. Section 1.56(g)-1(c)

A. Income From the Discharge of Indebtedness

Section 56(g)(4)(B) and § 1.56(g)-1(c) of the regulations provide that ACE includes amounts taken into account in determining earnings and profits but that are excluded from pre-adjustment alternative minimum taxable income (pre-adjustment AMTI). Section 56(g)(4)(B), as amended by section 7611(f)(2) of the Revenue Reconciliation Act of 1989, Public Law 101-239, provides that ACE does not include income from the discharge of indebtedness which is excluded from gross income under section 108 (or the corresponding provisions of prior law) Section 1.56(g)-1(c)(4) of the proposed regulations provided that "[a]mounts excluded from gross income under section 108 * * * or any corresponding provisions of law repealed by the Bankruptcy Tax Act of 1980 are not included in adjusted current earnings." Commenters pointed out that the proposed regulations did not address the treatment of income from the discharge

of indebtedness which is excluded under a prior law that was not repealed by the Bankruptcy Tax Act of 1980.

The final regulations under § 1.56(g)-1(c)(4)(i) are clarified to also exclude from ACE income from the discharge of indebtedness that is excluded from gross income under law that was not repealed by the 1980 Act.

B. Federal Income Tax Refunds

In response to comments received, § 1.56(g)-1(c)(4)(ii) of the final regulations is added to provide that refunds of federal income taxes are not included in ACE.

C. Income Accrued on Behalf of States and Municipalities

Section 115 provides that gross income does not include the income derived from any public utility or the exercise of any essential governmental function and accruing to a state or one of its political subdivisions. Income earned by a state generally is not subject to Federal income tax. See Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29; Rev. Rul. 87-2, 1987-1 C.B. 18. Because income clearly would not be subject to Federal income tax (including the AMT and ACE) if earned directly by a state or its political subdivisions, the fact that it accrues to a state or local government through an intermediary corporation does not change the result. Thus, § 1.56(g)-1(c)(4)(iii) of the final regulations provides that income that accrues to a state or local government through a corporation and that is not included in the gross income of the corporation under section 115 is not included in ACE.

D. Distributions of Appreciated Property

Several commenters were concerned that a distribution of appreciated property could result in an increase in earnings and profits that is not included in pre-adjustment AMTI, thus causing an increase in ACE. In most cases, this does not occur because there is no increase in earnings and profits that is permanently excluded from pre-adjustment AMTI.

The final regulations clarify that if a distribution of property gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to the distribution of that item of property are combined for purposes of determining the net effect of the distribution on the corporation's ACE for the taxable year. No ACE adjustment is required unless the net increase in earnings and profits exceeds the amount included in pre-adjustment AMTI.

In the case of a corporation's distribution of appreciated property with respect to its stock, section 312 provides that the earnings and profits of the distributing corporation is increased by the excess of the fair market value over the adjusted basis of the property (section 312(b)(1)) and decreased by the fair market value of the property (sections 312(a)(3) and (b)(2)). In addition, section 311(b)(1) provides that if a corporation distributes appreciated property to a shareholder in a distribution to which subpart A, part I of subchapter C applies, gain is recognized to the distributing corporation as if the property were sold to the shareholder at its fair market value. Thus, the excess of the distributed property's fair market value over its adjusted basis generally is included as gain under section 311(b)(1) in computing the distributing corporation's taxable income and pre-adjustment AMTI. Because the gain that is included in pre-adjustment AMTI will usually equal or exceed the net increase in earnings and profits, no ACE adjustment is needed in most cases.

E. Distribution of Encumbered Property or Shareholder's Assumption of Liabilities in Connection With a Distribution

Several commenters were concerned that a distribution of encumbered property or a shareholder's assumption of a liability in connection with a distribution of property could result in an increase in earnings and profits that is not included in pre-adjustment AMTI, thus causing an increase in ACE. In most cases, this does not occur because there is no increase in earnings and profits that is permanently excluded from pre-adjustment AMTI.

The final regulations clarify that if a distribution of encumbered property or the assumption by a shareholder of a liability in connection with a distribution of property gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to the distribution of that item of property are combined for purposes of determining the net effect of the distribution on the corporation's ACE for the taxable year.

In the case of a distribution by a corporation with respect to its stock, section 312(a)(3) provides that the earnings and profits of the corporation is decreased by the adjusted basis of distributed property. Section 312(b) provides that in the case of a distribution with respect to stock of appreciated property, earnings and profits is increased by the excess of the fair market value over the adjusted

basis of the property and decreased by the fair market value of the property. Section 312(c) provides that in making the adjustments to earnings and profits under section 312(a) and (b) for distributions with respect to stock, proper adjustment shall be made for the amount of any liability to which the distributed property is subject, and the amount of any liability of the corporation assumed by the shareholder in connection with the distribution. Thus, the amount of any decrease in earnings and profits as a result of a distribution with respect to stock is adjusted by the amount of any liability described in section 312(c)(1) or (2).

Section 311(b)(2) provides that if property is distributed subject to a liability or the shareholder assumes a liability in connection with the distribution, the fair market value of the property distributed shall be treated as not less than the amount of the liability. The excess of the distributed property's fair market value (determined in accordance with section 311(b)(2)) over its adjusted basis is included as gain under section 311(b)(1) in computing taxable income and pre-adjustment AMTI.

In many cases, the amount included in pre-adjustment AMTI (after applying the provisions of section 311, 336, or 356) will equal or exceed the net earnings and profits effect of the distribution. In such cases, no additional adjustment will be made in computing the distributing corporation's ACE.

F. Other Earnings and Profits Items

Commenters were concerned that the regulations did not specify that two particular items that are excluded from pre-adjustment AMTI do not increase earnings and profits and thus do not increase ACE. These two items are lessee improvements to leasehold property that are excluded from the lessor's gross income under section 109, and non-shareholder contributions to the capital of a corporation that are excluded from the corporation's income under section 118. Because these items do not generate earnings and profits when they are received by a corporation, the final regulations specify that these items are excluded from both pre-adjustment AMTI and ACE.

G. Surrender of Life Insurance Contracts

Section 1.56(g)-1(c)(5)(i) of the final regulations clarifies that if the ACE basis in a life insurance contract exceeds the amount of death benefits received or the amount received when the contract is surrendered, then the

resulting loss is allowed as a deduction in computing ACE.

H. Partial Lists of Earnings and Profits Items

The proposed regulations contain two non-exclusive lists of items that increase ACE. See §§ 1.56(g)-1(c)(6) and 1.56(g)-1(d)(3). Several commenters requested that new items added to these lists have prospective effect only.

Guidance on the proper treatment of an earnings and profits item for purposes of ACE may be effective retroactively. The Service is aware, however, of the difficulties that may arise in computing ACE if the proper treatment of an item in computing earnings and profits is uncertain. Therefore, when specifying new items to be included in ACE, the Service will consider making the treatment of the new item effective prospectively if substantial uncertainty as to treatment of the item in computing earnings and profits justifies this prospective effect for purposes of ACE. For example, § 1.56(g)-1(c)(6)(x) is added to the final regulations to provide that amounts that are excluded from pre-adjustment AMTI as a result of an election under section 831(b) (allowing certain insurance companies to compute their taxable income using only their investment income) are included in ACE for all taxable years beginning after December 31, 1989. Retroactivity is warranted in this case because the ACE treatment of section 831(b) elections was mentioned in the Conference Report to the Tax Reform Act of 1986. The final regulations also provide that additional items that increase ACE may be identified by the Commissioner in published guidance other than regulations.

III. Section 1.56(g)-1(d)

A. Dividends Paid to an ESOP

Many commenters questioned the disallowance of the deduction for dividends paid to an employee stock ownership plan (ESOP) in computing ACE. The Conference Report to the Tax Reform Act of 1986 states that "[a]djusted current earnings measures pre-tax income without diminution by reason of any dividend paid * * *. [N]o deduction is allowed with respect to a dividend paid." H.R. Rep. No. 841, 99th Cong., 2d Sess. II-276 (1986). Thus, § 1.56(g)-1(d)(3)(iii)(E) provides that ACE is determined without any section 404(k) deduction for dividends paid to an ESOP.

B. Nonpatronage Dividends of Cooperatives

Several commenters questioned the disallowance of the deduction under section 1382(c)(2) for nonpatronage dividends that are not paid with respect to stock. Section 1.56(g)-1(d)(3)(iii)(F) of the final regulations clarifies that the deduction under section 1382(c)(1) is disallowed in computing ACE, while the deduction under section 1382(c)(2) is allowed.

IV. Section 1.56(g)-1(f)

Commenters noted that § 1.56(g)-1(f)(2) merely states that section 173 does not apply in computing ACE. Commenters were concerned that in the absence of section 173, taxpayers would be required to determine which circulation costs are related to increasing circulation, which costs are related to maintaining circulation, and whether any of their circulation costs have a determinable useful life. The final regulations note that section 59(e) allows taxpayers to elect to capitalize all circulation costs and amortize them over three years. This election applies for purposes of ACE, as well as regular taxable income and pre-adjustment AMTI. Thus, taxpayers have a means to avoid the complexities of pre-section 173 law.

V. Section 1.56(g)-1(k)

Section 56(g)(4)(G) and § 1.56(g)-1(k) require certain corporations that have ownership changes (as defined in section 382) to restate the adjusted basis of their assets. A corporation has an ownership change if first, the corporation is a loss corporation, and second, there is an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the three-year period ending on the date on which a transaction is tested for an ownership change). See generally section 382(g). A corporation is a loss corporation under § 1.382-2T(f)(1) if it has certain net operating or capital losses, excess credits as defined in section 383, or a net unrealized built-in loss.

In order to simplify the determination of whether a corporation is a loss corporation, § 1.56(g)-1(k)(2) of the proposed regulations provided that in determining whether a corporation is a loss corporation, its net unrealized built-in loss is calculated using the regular tax basis of its assets. This relieves all corporations of the burden of making ACE, as well as regular tax, determinations of their status as loss corporations. Section 1.56(g)-1(k)(3)

required that once a loss corporation has an ownership change, the determination of whether the corporation has a net unrealized built-in loss to be eliminated is made using the ACE basis of its assets.

Commenters suggested that the calculation of any net unrealized built-in loss under § 1.56(g)-1(k)(3), as well as the corporation's status as a loss corporation under § 1.56(g)-1(k)(2), be determined by reference to the regular tax basis of the assets. The recommended approach, however, would narrow the scope of section 56(g)(4)(G) by allowing taxpayers that have a net unrealized built-in loss for ACE purposes but not for regular tax purposes to avoid restating the basis of their assets for ACE. Thus, the final regulations under section § 1.56(g)-1(k) are unchanged from the proposed regulations. In response to comments received, § 1.56(g)-1(k)(1) clarifies that the rules of § 1.338(b)-2T(b), if otherwise applicable to the transaction, are applied in making the allocation of basis for purposes of ACE.

VI. Clarifying Changes

The final regulations contain a number of clarifying and technical changes. For example, the regulations clarify that in determining ACE, to the extent an amount is included (or deducted) in computing pre-adjustment AMTI for the taxable year (whether because an adjustment is made under section 56 or 58, because of a tax preference item under section 57, or because the item is reflected in taxable income), that amount is not again included (or deducted) in computing ACE.

Other Matters

When the proposed regulations were published, the Service invited public comments on the proposed regulations and any other issues arising under section 56(g). Although this preamble does not discuss all of the comments received, the Service did consider all comments in drafting these final regulations. The Service appreciates the submission of these comments. The final regulations do not expand the provisions of the proposed regulations dealing with the determination of ACE by corporations filing a consolidated return. The Service intends to address consolidated return issues in more detail in future regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a

Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Personnel from other offices of the Service and the Treasury, however, assisted in developing these regulations, on matters of both substance and style.

List of Subjects

26 CFR §§ 1.1-1 through 1.58-8

Credits, Income taxes, Tax liability, Tax rates.

26 CFR §§ 1.861-1 through 1.999-1

Aliens, DISC, Exports, Foreign investment in United States, Foreign tax credit, Income taxes, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)-1 is also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2373).

Par. 2. The following center heading is added before § 1.56A-1:

Regulations Applicable to Taxable Years Beginning in 1969 and Ending in 1970

Par. 3. The following center heading is added before § 1.57:

Tax Preference Regulations

Par. 4. New § 1.56(g)-0 is added to read as follows:

§ 1.56(g)-0 Table of Contents.

This section lists the paragraphs contained in § 1.56(g)-1.

§ 1.56(g)-1 Adjusted current earnings.

- (a) Adjustment for adjusted current earnings.
 - (1) Positive adjustment.
 - (2) Negative adjustment.
 - (i) In general.
 - (ii) Limitation on negative adjustments.
 - (iii) Example.
 - (3) Negative amounts.
 - (4) Taxpayers subject to adjustment for adjusted current earnings.
 - (5) General rule for applying Internal Revenue Code provisions in determining adjusted current earnings.
 - (i) In general.
 - (ii) Example.
 - (6) Definitions.
 - (i) Pre-adjustment alternative minimum taxable income.
 - (ii) Adjusted current earnings.
 - (iii) Earnings and profits.
- (b) Depreciation allowed.
 - (1) Property placed in service after 1989.
 - (2) Property subject to new ACRS.
 - (i) In general.
 - (ii) Rules for computing the depreciation deduction.
 - (iii) Example.
 - (3) Property subject to original ACRS.
 - (i) In general.
 - (ii) Rules for computing the depreciation deduction.
 - (iii) Example.
 - (4) Special rule for certain section 168(f) property.
 - (5) Certain property not subject to ACRS.
- (c) Inclusion in adjusted current earnings of items included in earnings and profits.
 - (1) In general.
 - (2) Certain amounts not taken into account in determining whether an item is permanently excluded.
 - (3) Allowance of offsetting deductions.
 - (4) Special rules.
 - (i) Income from the discharge of indebtedness.
 - (ii) Federal income tax refunds.
 - (iii) Income earned on behalf of states and municipalities.
 - (5) Treatment of life insurance contracts.
 - (i) In general.
 - (ii) Inclusion of inside buildup.
 - (iii) Calculation of income on the contract.
 - (iv) Treatment of distributions under the life insurance contract.
 - (v) Treatment of death benefits.
 - (vi) Other rules.
 - (A) Term life insurance contracts without net surrender values.
 - (B) Life insurance contracts involving divided ownership.
 - (vii) Examples.
 - (6) Partial list of income items excluded from gross income but included in earnings and profits.
 - (7) Partial list of items excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings.
 - (d) Disallowance of items not deductible in computing earnings and profits.
 - (1) In general.

- (2) Deductions for certain dividends received.
 - (i) Certain amounts deducted under sections 243 and 245.
 - (ii) Special rules.
 - (A) Dividends received from a foreign sales corporation.
 - (B) Dividends received from a section 936 corporation.
 - (iii) Special rule for certain dividends received by certain cooperatives.
 - (3) Partial list of items not deductible in computing earnings and profits.
 - (4) Partial list of items deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings.
 - (e) Treatment of income items included, and deduction items not allowed, in computing pre-adjustment alternative minimum taxable income.
 - (f) Certain other earnings and profits adjustments.
 - (1) Intangible drilling costs.
 - (2) Certain amortization provisions do not apply.
 - (3) LIFO inventory adjustments. [RESERVED]
 - (4) Installment sales.
 - (i) In general.
 - (ii) Exception for prior dispositions.
 - (iii) Special rules for obligations to which section 453A applies.
 - (A) In general.
 - (B) Limitation on application of installment method.
 - (C) Treatment of the ineligible portion.
 - (D) Treatment of the eligible portion.
 - (E) Coordination with the pledge rule.
 - (F) Example.
 - (g) Disallowance of loss on exchange of debt pools. [Reserved].
 - (h) Policy acquisition expenses of life insurance companies.
 - (1) In general.
 - (2) Reasonably estimated life.
 - (3) Reasonable allowance for amortization.
 - (4) Safe harbor for public financial statements.
 - (i) [Reserved].
 - (j) Depletion.
 - (k) Treatment of certain ownership changes.
 - (1) In general.
 - (2) Definition of ownership change.
 - (3) Determination of net unrealized built-in loss immediately before an ownership change.
 - (4) Example.
 - (l) [Reserved].
 - (m) Adjusted current earnings of foreign corporations. [Reserved].
 - (n) Adjustment for adjusted current earnings of consolidated groups.
 - (1) Positive adjustments.
 - (2) Negative adjustments.
 - (i) In general.
 - (ii) Limitation on negative adjustments.
 - (3) Definitions.
 - (i) Consolidated pre-adjustment alternative minimum taxable income.
 - (ii) Consolidated adjusted current earnings.
 - (4) Example.
 - (o) [Reserved].
 - (p) Effective dates for corporate partners in partnerships.

- (1) In general.
 (2) Application of effective dates.
 (3) Example.
 (q) Treatment of distributions of property to shareholders.
 (1) In general.
 (2) Examples.

Par. 5. New § 1.56(g)-1 is added in the appropriate place to read as follows:

§ 1.56(g)-1 Adjusted Current Earnings.

(a) *Adjustment for adjusted current earnings—(1) Positive adjustment.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of any taxpayer described in paragraph (a)(4) of this section is increased by the adjustment for adjusted current earnings. The adjustment for adjusted current earnings is 75 percent of the excess, if any, of—

(i) The adjusted current earnings (as defined in paragraph (a)(6)(ii) of this section) of the taxpayer for the taxable year over,

(ii) The pre-adjustment alternative minimum taxable income (as defined in paragraph (a)(6)(i) of this section) of the taxpayer for the taxable year.

(2) *Negative adjustment—(i) In general.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of any taxpayer is decreased, subject to the limitation of paragraph (a)(2)(ii) of this section, by 75 percent of the excess, if any, of pre-adjustment alternative minimum taxable income (as defined in paragraph (a)(6)(i) of this section), over adjusted current earnings (as defined in paragraph (a)(6)(ii) of this section).

(ii) *Limitation on negative adjustments.* The amount of the negative adjustment for any taxable year is limited to the excess, if any, of—

(A) The aggregate increases in alternative minimum taxable income in prior years under paragraph (a)(1) of this section over

(B) The aggregate decreases in alternative minimum taxable income in prior years under this paragraph (a)(2).

Any excess of pre-adjustment alternative minimum taxable income over adjusted current earnings that is not allowed as a negative adjustment for the taxable year because of the limitation in this paragraph (a)(2)(ii) is not applied to reduce any positive adjustment in any other taxable year.

(iii) *Example.* The following example illustrates the provisions of this paragraph (a)(2):

(A) Corporation P is a calendar-year taxpayer and has pre-adjustment alternative minimum taxable income and adjusted current earnings in the following amounts for 1990 through 1993:

| Year | Pre-adjustment alternative minimum taxable income | Adjusted current earnings |
|------|---|---------------------------|
| 1990 | \$800,000 | \$700,000 |
| 1991 | 600,000 | 900,000 |
| 1992 | 500,000 | 400,000 |
| 1993 | 500,000 | 100,000 |

(B) Under these facts, corporation P has the following positive and negative adjustments for adjusted current earnings:

| Year | Negative adjustment | Positive adjustment |
|------|---------------------|---------------------|
| 1990 | 0 | 0 |
| 1991 | 0 | \$225,000 |
| 1992 | \$75,000 | 0 |
| 1993 | 150,000 | 0 |

(C) In 1990, P has a potential negative adjustment (before the cumulative limitation) of \$75,000 (75 percent of the \$100,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings). Nonetheless, P is not permitted a negative adjustment because P had no prior increases in its alternative minimum taxable income due to an adjustment for adjusted current earnings.

(D) In 1991, P has a positive adjustment of \$225,000 (75 percent of the \$300,000 excess of adjusted current earnings over pre-adjustment alternative minimum taxable income). P is not allowed to use the prior year's excess of pre-adjustment alternative minimum taxable income over adjusted current earnings to reduce its 1991 positive adjustment.

(E) In 1992, P is permitted a negative adjustment of \$75,000, the full amount of 75 percent of the \$100,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings for the taxable year. This is because P's prior cumulative increases in alternative minimum taxable income due to the positive adjustments for adjusted current earnings exceed the negative adjustment for the year.

(F) In 1993, P has a potential negative adjustment (before the cumulative limitation) of \$300,000 (75 percent of the \$400,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings). P's net cumulative increases in alternative minimum taxable income due to the adjustment for adjusted current earnings are \$150,000 (\$225,000 increase in 1991, less \$75,000 decrease in 1992). Thus, P's negative adjustment in 1993 is limited to \$150,000. P may not use the remaining portion (\$150,000) of the negative adjustment for 1993 to reduce positive adjustments in other taxable years.

(3) *Negative amounts.* In determining whether an excess exists under paragraph (a)(1) or (a)(2) of this section, a positive amount exceeds a negative amount by the sum of the absolute numbers, and a smaller negative amount exceeds a larger negative amount by the difference between the absolute

numbers. Thus, for example, a positive amount of adjusted current earnings of \$30 exceeds a negative amount (or loss) of pre-adjustment AMTI of \$10 by the sum of the absolute numbers, or \$40 (30 + 10). Accordingly, the adjustment for adjusted current earnings would be 75 percent of \$40, or \$30. In contrast, a negative amount of adjusted current earnings of \$10 exceeds a negative amount (or loss) of pre-adjustment alternative minimum taxable income of \$30 by the difference between the absolute numbers, or \$20 (30 - 10). Accordingly, the adjustment for adjusted current earnings would be 75 percent of \$20, or \$15.

(4) *Taxpayers subject to adjustment for adjusted current earnings.* The adjustment for adjusted current earnings applies to any corporation other than—

(i) An S corporation as defined in section 1361,

(ii) A regulated investment company as defined in section 851,

(iii) A real estate investment trust as defined in section 856, or

(iv) A real estate mortgage investment conduit as defined in section 860A.

(5) *General rule for applying Internal Revenue Code provisions in determining adjusted current earnings—(i) In general.* Except as otherwise provided by regulations or other guidance issued by the Internal Revenue Service, all Internal Revenue Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining adjusted current earnings.

For example, the rules of part V of subchapter P (relating to original issue discount and similar matters) of the Code apply in determining the amount (and the timing) of any interest income included in adjusted current earnings under this section. In applying Code provisions, however, the adjustments of section 56(g) and this section are also taken into account. For example, in applying the capitalization provisions of section 263A, the amount of depreciation to be capitalized is based on the amount of depreciation allowed in computing adjusted current earnings.

(ii) *Example.* The following example illustrates the provisions of this paragraph (a)(5):

(A) Corporation N is a calendar year manufacturer of golf clubs. N places new manufacturing equipment in service in 1990. The regular tax depreciation allowable for this equipment is \$80,000; the pre-adjustment alternative minimum taxable income depreciation is \$60,000; and the adjusted current earnings depreciation is \$40,000. All of the golf clubs N produces in 1990 are unsold and are in ending inventory.

(B) Pursuant to section 263A and § 1.263A-1T(b)(2)(ii)(f), N must capitalize the

depreciation allowed for the year for the new manufacturing equipment in the ending inventory of golf clubs. Thus, when N sells the golf clubs (or is deemed to have sold them under its normal method of accounting), the cost of goods sold attributable to the capitalized depreciation will be \$80,000 in computing regular taxable income; \$80,000 in computing pre-adjustment alternative minimum taxable income; and \$40,000 in computing adjusted current earnings.

(6) *Definitions.* The following terms have the following meanings for purpose of this section.

(i) *Pre-adjustment alternative minimum taxable income.* Pre-adjustment alternative minimum taxable income is the alternative minimum taxable income of the taxpayer for the taxable year, determined under section 55(b)(2), but without the adjustment for adjusted current earnings and without the alternative tax net operating loss deduction under section 56(a)(4).

(ii) *Adjusted current earnings.* Adjusted current earnings is the pre-adjustment alternative minimum taxable income of the taxpayer for the taxable year, adjusted as provided in section 56(g) and this section. To the extent an amount is included (or deducted) in computing pre-adjustment alternative minimum taxable income for the taxable year (whether because an adjustment is made under section 56 or 58, because of a tax preference item under section 57, or because the item is reflected in taxable income), that amount is not again included (or deducted) in computing adjusted current earnings for the taxable year.

(iii) *Earnings and profits.* Earnings and profits means current earnings and profits within the meaning of section 316(a)(2), that is, earnings and profits for the taxable year computed as of the close of the taxable year of the corporation without diminution by reason of any distributions made during the taxable year.

(b) *Depreciation allowed.* The depreciation deduction allowed in computing adjusted current earnings is determined under the rules of this paragraph (b). Generally, the rules for computing the adjusted current earnings depreciation deduction differ depending on the taxable year in which the property is placed in service and the method used in computing the depreciation deduction for taxable income purposes.

(1) *Property placed in service after 1989.* The depreciation deduction for property placed in service in a taxable year beginning after December 31, 1989, is the amount determined by using the alternative depreciation system of section 168(g). This paragraph (b)(1)

does not apply to property to which paragraph (b)(4) of this section applies (relating to certain property described in sections 169 (f)(1) through (f)(4)).

(2) *Property subject to new ACRS.*—(i) *In general.* This paragraph (b)(2) provides the rules for computing the depreciation deduction for property to which the amendments made by section 201 of the Tax Reform Act of 1986 (new ACRS) apply (generally property placed in service after December 31, 1986), and that is placed in service in a taxable year beginning before January 1, 1990. This paragraph (b)(2) does not apply to property described in paragraph (b)(4) of this section (relating to certain property described in sections 169 (f)(1) through (f)(4)) or to property described in paragraph (b)(5)(i) of this section (relating to certain churning transactions described in section 168(f)(5)).

(ii) *Rules for computing the depreciation deduction.* The depreciation deduction for property described in this paragraph (b)(2) is the amount determined by using—

(A) The adjusted basis of the property as determined in computing alternative minimum taxable income as of the close of the last taxable year beginning before January 1, 1990,

(B) The straight-line method, and

(C) The recovery period that consists of the remainder of the recovery period applicable to the property under the alternative depreciation system of section 168(g).

Thus, the recovery period begins on the first day of the first taxable year beginning after December 31, 1989, and ends on the last day of the recovery period that would have applied had the recovery period for the property originally been determined under section 168(g). In determining the recovery period that would have applied, the property is deemed placed in service on the date it was considered placed in service under the depreciation convention that would have applied to the property under section 168(d).

(iii) *Example.* The following example illustrates the provisions of this paragraph (b)(2).

Example. Corporation X, a calendar-year taxpayer, purchases and places in service on August 1, 1987, computer-based telephone central office switching equipment. This is the only item of depreciable property X places in service during 1987. Thus, the applicable convention under section 168(d) is the half-year convention. As of December 31, 1989, the adjusted basis of the property used in computing alternative minimum taxable income is \$42,000. The recovery period that would have applied to the property under section 168(g)(2) is 9.5 years (from July 1, 1987 to December 31, 1996). Thus, the recovery

period for computing adjusted current earnings under section 56(g)(4)(A)(ii) and this paragraph (b)(2) begins on January 1, 1990, and ends on December 31, 1996. X's 1990 depreciation deduction for computing adjusted current earnings is \$6,000, determined under the straight-line method by dividing \$42,000 (adjusted basis) by 7 (recovery period).

(3) *Property subject to original ACRS.*—(i) *In general.* This paragraph (b)(3) provides the rules for computing the depreciation deduction for property to which section 168 as in effect on the day before the date of enactment of the Tax Reform Act of 1986 (original ACRS) applies and that is placed in service in a taxable year beginning before January 1, 1990 (generally property that was placed in service after December 31, 1980 and before January 1, 1987). In determining whether original ACRS applies to property, the fact that the unadjusted basis of the property is reduced or eliminated under section 168(d)(4)(A)(i) of original ACRS is not taken into account. This paragraph (b)(3) does not apply to property described in paragraph (b)(4) or (b)(5)(i) of this section (relating to certain section 168(f) property).

(ii) *Rules for computing the depreciation deduction.* The depreciation deduction for property described in this paragraph (b)(3) is the amount determined by using—

(A) The adjusted basis of the property as determined in computing taxable income as of the close of the last taxable year beginning before January 1, 1990,

(B) The straight-line method, and

(C) The recovery period that consists of the remainder of the recovery period applicable to the property under the alternative depreciation system of section 168(g). Thus, the recovery period begins on the first day of the first taxable year beginning after December 31, 1989, and ends on the last day of the recovery period that would have applied had the recovery period for the property originally been determined under section 168(g)(2). In determining the recovery period that would have applied, the property is deemed placed in service on the date it was considered placed in service under the depreciation convention that would have applied to the property under section 168(d) (without regard to section 168(d)(3)).

(iii) *Example.* The following example illustrates the provisions of this paragraph (b)(3).

Example. Corporation Y, a calendar-year taxpayer, purchases and places in service on December 1, 1986, computer-based telephone central office switching equipment. The depreciation convention that would have

applied to this property under section 168(d) (without regard to section 168(d)(3)) is the half-year convention. As of December 31, 1989, the adjusted basis of the property used in computing taxable income is \$21,000. The recovery period for the property under section 168(g)(2) is 9.5 years (from July 1, 1986 to December 31, 1995). Thus, the recovery period for computing adjusted current earnings under section 56(g)(4)(A)(iii) and this paragraph (b)(3) begins on January 1, 1990, and ends on December 31, 1995. Y's 1990 depreciation deduction for computing adjusted current earnings is \$3,500, determined under the straight-line method by dividing \$21,000 (adjusted basis) by 6 (recovery period).

(4) *Special rule for certain section 168(f) property.* The depreciation or amortization deduction for property described in section 168(f) (1) through (4) is determined in the same manner as used in computing taxable income, without regard to when the property is placed in service.

(5) *Certain property not subject to ACRS.* The depreciation or amortization deduction for property not described in paragraphs (b) (1) through (4) of this section is determined in the same manner as used in computing taxable income. Thus, this paragraph (b)(5) applies to—

(i) Property placed in service after December 31, 1980, in a taxable year beginning before January 1, 1990, and that is excluded from the application of original ACRS or new ACRS by section 168(e)(4) of original ACRS or section 168(f)(5)(A)(i) of new ACRS, and

(ii) Property placed in service before January 1, 1981.

(c) *Inclusion in adjusted current earnings of items included in earnings and profits—(1) In general.* Except as otherwise provided in paragraph (c)(4) of this section, adjusted current earnings includes all income items that are permanently excluded from (i.e., not taken into account in determining pre-adjustment alternative minimum taxable income but that are taken into account in determining earnings and profits. An income item is considered taken into account in determining pre-adjustment alternative minimum taxable income without regard to the timing of its inclusion. Thus, this paragraph (c)(1) does not apply to any income item that is, has been, or will be included in pre-adjustment alternative minimum taxable income. For example, a taxpayer eligible to use the completed contract method of accounting for long-term construction contracts does not take income (or expenses) into account in determining pre-adjustment alternative minimum taxable income for taxable years before the taxable year the contract is completed. The taxpayer is required

under section 312(n)(6) to include income (and expenses) in earnings and profits throughout the term of the contract under the percentage of completion method. This paragraph (c)(1) does not require the income on the contract to be included in adjusted current earnings, however, because the income will be taken into account in the taxable year the contract is completed and therefore is considered to be taken into account in determining pre-adjustment alternative minimum taxable income.

(2) *Certain amounts not taken into account in determining whether an item is permanently excluded.* The fact that proceeds from an income item may eventually be reflected in pre-adjustment alternative minimum taxable income of another taxpayer on the liquidation or disposal of a business, or similar circumstances, is not taken into account in determining whether the item is permanently excluded from pre-adjustment alternative minimum taxable income. Thus, for example, a corporation's adjusted current earnings include interest excluded from pre-adjustment alternative minimum taxable income under section 103 even though the interest might eventually be reflected in the pre-adjustment alternative minimum taxable income of a corporate shareholder as gain on the liquidation of the corporation.

(3) *Allowance of offsetting deductions.* In determining adjusted current earnings under this paragraph (c), a deduction is allowed for all items that relate to income required to be included in adjusted current earnings under this paragraph (c) and that would be deductible in computing pre-adjustment alternative minimum taxable income if the income items to which the items of deduction relate were included in pre-adjustment alternative minimum taxable income for any taxable year. For example, deductions disallowed under section 265(a)(2) for the costs of carrying tax-exempt obligations, the interest on which is excluded from pre-adjustment alternative minimum taxable income under section 103 but is included in adjusted current earnings under this paragraph (c), are generally allowed as deductions in computing adjusted current earnings. Amounts deductible under this paragraph (c)(3) are taken into account using the taxpayer's method of accounting and are subject to any provisions or limitations of the Code that would have applied if the amounts had been deductible in determining pre-adjustment alternative minimum taxable income. For example, section 267(a)(2) may affect the timing of a deduction

otherwise disallowed under section 265(a)(2).

(4) *Special rules.* Adjusted current earnings does not include the following amounts.

(i) *Income from the discharge of indebtedness.* Amounts that are excluded from gross income under section 108 of the Internal Revenue Code of 1986 or any corresponding provision of prior law (including the Bankruptcy Tax Act of 1980, case law, income tax regulations and administrative pronouncements).

(ii) *Federal income tax refunds.* Refunds of federal income taxes.

(iii) *Income earned on behalf of states and municipalities.* Amounts that are excluded from gross income under section 115.

(5) *Treatment of life insurance contracts—(i) In general.* This paragraph (c)(5) addresses the treatment of life insurance contracts in determining adjusted current earnings. These rules apply to life insurance contracts as defined in section 7702. Generally, death benefits under a life insurance contract are included in adjusted current earnings, and all other distributions (including surrenders) are taxed in accordance with the principles of section 72(e), taking into account the taxpayer's basis in the contract for purposes of adjusted current earnings. If the adjusted basis in the contract for purposes of adjusted current earnings exceeds the amount of death benefits received or the amount received when the contract is surrendered (increased by the amount of any outstanding policy loan), the resulting loss is allowed as a deduction under paragraph (c)(3) of this section in computing adjusted current earnings for the taxable year. In addition, undistributed income on the contract is included in adjusted current earnings as provided in paragraph (c)(5)(ii) of this section. Paragraph (c)(5)(vi)(A) of this section provides special rules for term insurance that has no net surrender value.

(ii) *Inclusion of inside buildup.* Income on a life insurance contract with respect to a taxable year (or any shorter period either ending or beginning with the date of a distribution from the contract) is included in adjusted current earnings for the taxable year. Thus, income on the contract is calculated from the beginning of a taxable year to the date of any distribution, from immediately after any distribution to the date of the next distribution, and from the last distribution during the taxable year through the end of the taxable year. Income on a life insurance contract is not included in adjusted current

earnings for any taxable year in which the insured dies or the contract is completely surrendered for its entire net surrender value. Solely for purposes of computing adjusted current earnings, the taxpayer's adjusted basis in the contract (as determined under section 72(e)(6)) is increased to reflect any positive income on the contract included in adjusted current earnings under this paragraph (c)(5)(ii). The manner in which the income on the contract is determined for adjusted current earnings purposes is prescribed in paragraph (c)(5)(iii) of this section. If the income on the contract determined under paragraph (c)(5)(iii) of this section is a negative amount, income on the contract is not included in adjusted current earnings and no deduction from adjusted current earnings is allowed for the negative amount.

(iii) *Calculation of income on the contract.* For purposes of determining adjusted current earnings, the income on a life insurance contract for any period, including a taxable year, is the excess, if any, of—

(A) The sum of the contract's net surrender value (as defined in section 7702(f)(2)(B)) at the end of the period, and any distributions under the contract during the period that, in accordance with the principles of section 72(e), are not taxed because they represent recoveries of the taxpayer's basis in the contract for adjusted current earnings, over

(B) The sum of the contract's net surrender value at the end of the preceding period, and any premiums paid under the contract during the period.

(iv) *Treatment of distributions under the life insurance contract.* Any distribution under a life insurance contract (whether a partial withdrawal or an amount received on complete surrender of the contract) is included in adjusted current earnings in accordance with the principles of section 72(e), taking into account the taxpayer's basis in the contract for purposes of computing adjusted current earnings. The taxpayer's basis in the contract is equal to the basis at the end of the immediately preceding period plus any premiums paid before the distribution. The taxpayer's basis in the contract for purposes of adjusted current earnings is reduced, in accordance with the principles of section 72(e), to the extent that the distribution is not included in adjusted current earnings because it represents a recovery of that basis.

(v) *Treatment of death benefits.* The excess of the contractual death benefit of a life insurance contract over the taxpayer's adjusted basis in the contract

for purposes of computing adjusted current earnings at the time of the insured's death is included in adjusted current earnings as provided by paragraph (c)(6)(i) of this section. The amount of the death benefit that is taken into account for adjusted current earnings includes the amount of any outstanding policy loan treated as forgiven or discharged by the insurance company upon the death of the insured.

(vi) *Other rules—(A) Term life insurance contract without net surrender values.* Except as provided in this paragraph (c)(5)(vi), the requirements of paragraph (c)(5) of this section do not apply to term life insurance contracts that provide no net surrender value. Adjusted current earnings are reduced by any premiums paid under such a contract that are allocable to the taxable year. Any premiums paid that are not allocable to the taxable year must be included in the basis of the contract. The death benefit under such a term insurance contract is included in adjusted current earnings as provided by paragraph (c)(5)(v) of this section.

(B) *Life insurance contracts involving divided ownership.* If the ownership of a life insurance contract is divided between different persons (for example, a split-dollar arrangement), the requirements of paragraph (c)(5) of this section apply to the separate ownership interests as though each interest were a separate contract.

(vii) *Examples.* The following examples illustrate the provisions of this paragraph (c)(5).

Example 1. (i) On January 1, 1987, corporation X, a calendar year taxpayer, purchased a flexible premium life insurance contract with a death benefit of \$100,000 and planned annual gross premiums of \$2,200 payable on January 1 of each year. The net surrender value of the contract at the end of 1987 and subsequent years, together with the cumulative premiums for the contract at the end of each year, are set forth in the following table:

| Year | Cumulative premiums paid | Year-end net surrender value |
|------------|--------------------------|------------------------------|
| 1987 | \$2,200 | \$2,420 |
| 1988 | 4,400 | 5,082 |
| 1989 | 6,600 | 8,010 |
| 1990 | 8,800 | 11,231 |
| 1991 | 11,000 | 14,774 |

(ii) Under paragraph (c)(5)(ii) of this section, X must include \$1,021 in adjusted current earnings for 1990. The inclusion is computed by subtracting from the net surrender value of the contract at the end of the taxable year (\$11,231) the sum of the net surrender value of the contract at the end of

the preceding taxable year (\$8,010) plus the premiums paid during the taxable year (\$2,200). See paragraph (c)(5)(iii) of this section. For purposes of determining adjusted current earnings, X's adjusted basis in the contract would be increased at the end of 1990 from \$8,800 to \$9,821 to reflect the \$1,021 inclusion. See paragraph (c)(5)(ii) of this section. The income under the contract attributable to taxable years prior to 1990 does not increase X's adjusted basis in the contract.

(iii) For 1991, the income on the contract included in adjusted current earnings is determined in the same manner as the preceding year, and there is a corresponding increase in X's adjusted basis in the contract. Thus, for 1991, the income on the contract is \$1,343, which is determined by subtracting from the net surrender value of the contract at the end of the taxable year (\$14,774) the sum of the net surrender value at the end of the preceding taxable year (\$11,231) plus the premiums paid during the taxable year (\$2,200). At the end of 1991, X's adjusted basis in the contract for adjusted current earnings is \$13,364, which reflects the basis of the contract at the beginning of 1991, increased by the premium paid during the year (\$2,200) and the income on the contract that has been included in adjusted current earnings for the taxable year (\$1,343).

Example 2. The facts are the same as in example 1, except that, after the payment of the premium for 1991, the insured dies and X receives the \$100,000 death benefit under the contract. Under paragraph (c)(5)(ii) of this section, no amount is included in adjusted current earnings for income on the contract for the taxable year in which the insured dies. Instead, under paragraph (c)(5)(v) of this section, X must include the adjusted current earnings for 1991 the excess of the death benefit (\$100,000) over the adjusted basis in the contract for purposes of computing adjusted current earnings at the time of the insured's death (\$12,021), which equals X's adjusted basis in the contract at the end of 1990 (\$9,821), increased by X's premium payment for 1991 (\$2,200).

Example 3. (i) The facts are the same as in example 1, except that in addition to making the \$2,200 planned premium payment for 1992, X receives a \$16,200 distribution under the contract on February 1, 1992, leaving a net surrender value of \$915 immediately following the distribution. On March 1, 1992, X pays an additional premium of \$5,000 under the contract. The net surrender value of the contract at the end of 1992 is \$6,417.

(ii) *Treatment of the distribution.* Under paragraph (c)(5)(iv) of this section, the \$16,200 distribution in 1992 is included in adjusted current earnings as an amount taxable in accordance with the principles of section 72(e) to the extent that the distribution (\$16,200) exceeds X's adjusted basis for adjusted current earnings, as determined at the end of the immediately preceding period, and including premiums paid through the period ending on the date of the distribution (\$15,564). Thus, X must include \$636 in adjusted current earnings for 1992 as an amount taxable in accordance with the principles of section 72(e).

(iii) Determination of the income on the contract. Under paragraph (c)(5)(iii) of this section, for 1992, the income on the contract must be separately determined for the period beginning with the first day of the taxable year to the date of the distribution and for the period beginning immediately after the distribution to the end of the taxable year, using the contract's net surrender values at the beginning and end of each of these periods. The income on the contract for the period beginning on January 1, 1992 and ending on February 1, 1992 (the date of the distribution) is equal to the excess, if any, of (A) the sum of the net surrender value at the end of the period (\$915) and the amount of the distribution that is allocable to X's basis in the contract for adjusted current earnings (\$15,564), over (B) the sum of the net surrender value at the end of the preceding taxable year (\$14,774) plus any premiums paid on the contract during the period (\$2,200). Because the net result of this computation is a negative amount $((\$915 + \$15,564) - (\$14,774 + \$2,200) = -495)$, no income on the contract for the period ending with the date of the distribution is included in adjusted current earnings for 1992.

(iv) Under paragraph (c)(5)(ii), X must also determine the income on the contract for the period beginning immediately after the distribution through the end of the taxable year. The income on the contract for this period is \$502, which is equal to the excess of the net surrender value at the end of the taxable year (\$6,417) over the sum of the net surrender value at the end of the preceding period (\$915), plus any premiums paid during the period (\$5,000). At the end of 1992, X's adjusted basis in the contract for adjusted current earnings is \$5,502, determined by adding the income on the contract (\$502) and the premiums paid during the period (\$5,000) to the basis at the end of the preceding period (\$0).

(v) Thus, X must include a total of \$1,138 $(\$636 + \$502)$ in adjusted current earnings for 1992. This inclusion reflects both the undistributed income on the contract for the taxable year plus the amount of income from distributions under the contract that is taxed in accordance with the principles of section 72(e) using X's adjusted basis in the contract for adjusted current earnings.

(6) *Partial list of income items excluded from gross income but included in earnings and profits.* The following is a partial list of items that are permanently excluded from pre-adjustment alternative minimum taxable income but that are included in earnings and profits, and are therefore included in adjusted current earnings under this paragraph (c).

(i) Proceeds of life insurance contracts that are excluded under section 101, to the extent provided in paragraph (c)(5)(v) or (c)(5)(vi) of this section.

(ii) Interest that is excluded under section 103.

(iii) Amounts received as compensation for injuries or sickness that are excluded under section 104.

(iv) Income taxes of a lessor of property that are paid by a lessee and are excluded under section 110.

(v) Income attributable to the recovery of an item deducted in computing earnings and profits in a prior year that is excluded under section 111.

(vi) Amounts received as proceeds from sports programs that are excluded under section 114.

(vii) Cost-sharing payments that are excluded under section 126, to the extent section 126(e) does not apply.

(viii) Interest on loans used to acquire employer securities that is excluded under section 133.

(ix) Financial assistance that is excluded under section 597.

(x) Amounts that are excluded from pre-adjustment alternative minimum taxable income as a result of an election under section 831(b) (allowing certain insurance companies to compute their pre-adjustment alternative minimum taxable income using only their investment income).

Items described in paragraph (c)(1) of this section must be included in earnings and profits (and therefore in adjusted current earnings) even if they are not identified in this paragraph (c)(6). The Commissioner may identify additional items described in paragraph (c)(1) in other published guidance.

(7) *Partial list of items excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings.* The following is a partial list of items that are excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings, and for which no adjustment is allowed under this section.

(i) The value of improvements made by a lessee to a lessor's property that is excluded from the lessor's income under section 109.

(ii) contributions to the capital of a corporation by a non-shareholder that are excluded from the corporation's income under section 118.

The Commissioner may identify additional items described in this paragraph (c)(7) in other published guidance.

(d) *Disallowance of items not deductible in computing earnings and profits—(1) In general.* Except as otherwise provided in this paragraph (d), no deduction is allowed in computing adjusted current earnings for any items that are not taken into account in determining earnings and profits for any taxable year, even if the items are taken into account in determining pre-adjustment alternative minimum taxable income. These items

therefore increase adjusted current earnings to the extent they are deducted in computing pre-adjustment alternative minimum taxable income. An item of deduction is considered taken into account without regard to the timing of its deductibility in computing earnings and profits. Thus, to the extent an item is, has been, or will be deducted for purposes of determining earnings and profits, it does not increase adjusted current earnings in the taxable year in which it is deducted for purposes of determining pre-adjustment alternative minimum taxable income. For example, a deduction allowed (in determining pre-adjustment alternative minimum taxable income) under section 196 for unused research credits allowable under section 41 is taken into account in computing earnings and profits because the costs that gave rise to the credit were deductible in computing earnings and profits when incurred. Therefore, the deduction does not increase adjusted current earnings. As a further example, payments by a United States parent corporation with respect to employees of certain foreign subsidiaries, which are deductible under section 176, are considered contributions to the capital of the foreign subsidiary for purposes of computing earnings and profits. Although the payments are not deductible in computing the earnings and profits of the United States parent corporation in the year incurred, the payments do increase the parent's basis in its stock in the foreign subsidiary. This basis increase will reduce any gain the parent may later realize for purposes of computing earnings and profits on the disposition of the stock of the foreign subsidiary. Therefore, the amount of the payment by the parent is considered taken into account in computing the earnings and profits of the parent and does not increase adjusted current earnings. Thus, only deduction items that are never taken into account in computing earnings and profits are disallowed in computing adjusted current earnings under this paragraph (d).

(2) *Deductions for certain dividends received—(i) Certain amounts deducted under sections 243 and 245.* Paragraph (d)(1) of this section does not apply to, and adjusted current earnings therefore are not increased by, amounts deducted under sections 243 and 245 that qualify as 100-percent deductible dividends under sections 243(a), 245(b) or 245(c), or to any dividend received from a 20-percent owned corporation (as defined in section 243(c)(2)), to the extent that the dividend giving rise to the

deductions is attributable to earnings of the paying corporation that are subject to federal income tax. Earnings are considered subject to federal income tax return (that is filed or, if not, that should be filed) of an entity subject to United States taxation, even if there is no resulting United States tax liability (e.g., because of net operating losses or tax credits, other than the credit provided for in section 936).

(ii) *Special rules*—(A) *Dividends received from a foreign sales corporation*. The portion of a dividend received from a foreign sales corporation (FSC) that is classified as a 100-percent deductible dividend attributable to earnings of the FSC subject to federal income tax is that portion of the dividend distributed out of earnings and profits of the FSC attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a) (1) or (2), and to non-exempt foreign trade income determined under section 925(a)(3) that is effectively connected with the conduct of a trade or business in the United States (determined without regard to section 921). If the FSC is a 20-percent owned corporation (as defined in section 243(c)(2)), an additional portion of that dividend is classified as being attributable to earnings of the FSC subject to federal income tax to the extent that the dividend is distributed out of earnings and profits of the FSC attributable to effectively connected income (as defined in section 245(c)(4)(B)). A FSC is defined in section 922 and, for purposes of this paragraph, includes a small FSC and a former FSC. The ordering rules for distributions from a FSC set forth in § 1.926(a)-1T(b)(1) apply to determine the classification of earnings and profits out of which a distribution has been made.

(B) *Dividends received from a section 936 corporation*. In the case of a dividend received from a corporation eligible for the credit provided by section 936, only that part of the dividend that is attributable to income that is not eligible for the credit is attributable to earnings of the paying corporation that are subject to federal income tax. Dividends are deemed to be distributed first out of earnings and profits for the current taxable year of the section 936 corporation, to the extent thereof, and then out of the most recently accumulated earnings and profits, under the principles of section 316. With respect to a distribution of less than all of the earnings and profits for the current or any prior taxable year, the amount of the distribution

attributable to income not eligible for the section 936 credit is determined on a pro rata basis. For example, assume that a section 936 corporation earns \$100 of taxable income in its current taxable year, \$10 of which is not eligible for the credit under section 936. If the section 936 corporation makes a distribution of \$50 during that year, \$5 of that distribution (\$10 of income not eligible for the section 936 credit divided by \$100 of taxable income, times \$50 distributed) is deemed to be attributable to earnings of the paying corporation that are subject to federal income tax.

(iii) *Special rule for certain dividends received by certain cooperatives*. Paragraph (d)(1) of this section does not apply to, and adjusted current earnings do not include, any dividend received by any organization to which part I of subchapter T of the Code applies and that is engaged in the marketing of agricultural or horticultural products, if the dividend is paid by a FSC and is allowable as a deduction under section 245(c).

(3) *Partial list of items not deductible in computing earnings and profits*. The following is a partial list of items that are not taken into account in computing earnings and profits and thus are not deductible in computing adjusted current earnings.

(i) Unrecovered losses attributable to certain damages that are deductible under section 186, to the extent those damages were previously deducted in computing earnings and profits.

(ii) The deduction for small life insurance companies allowed under section 806.

(iii) Dividends deductible under the following sections of the Code:

(A) Dividends received by corporations that are deductible under section 243, to the extent paragraph (d)(2)(i) of this section does not apply.

(B) Dividends received on certain preferred stock that are deductible under section 244.

(C) Dividends received from certain foreign corporations that are deductible under section 245, to the extent neither paragraph (d)(2)(i) nor (d)(2)(iii) of this section applies.

(D) Dividends paid on certain preferred stock of public utilities that are deductible under section 247.

(E) Dividends paid to an employee stock ownership plan that are deductible under section 404(k).

(F) Non-patronage dividends that are paid and deductible under section 1382(c)(1).

Items described in paragraph (d)(1) of this section are not taken into account in computing earnings and profits (and

thus are not deductible in computing adjusted current earnings) even if they are not identified in this paragraph (d)(3). The Commissioner may identify additional items described in paragraph (d)(1) of this section in other published guidance.

(4) *Partial list of items deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings*. The following is a partial list of items that are deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings, and for which no adjustment is allowed under this section.

(i) Payments by a United States corporation with respect to employees of certain foreign corporations that are deductible under section 176.

(ii) Dividends paid on deposits by thrift institutions that are deductible under section 591.

(iii) Life insurance policyholder dividends that are deductible under section 808.

(iv) Dividends paid by cooperatives that are deductible under sections 1382(b) or 1382(c)(2) and that are not paid with respect to stock.

The Commissioner may identify additional items described in this paragraph (d)(4) in other published guidance.

(e) *Treatment of income items included, and deduction items not allowed, in computing pre-adjustment alternative minimum taxable income*. Adjusted current earnings includes any income item that is included in pre-adjustment alternative minimum taxable income, even if that income item is not included in earnings and profits for the taxable year. Except as specifically provided in paragraph (c)(3) or (c)(5) of this section, no deduction is allowed for an item in computing adjusted current earnings if the item is not deductible in computing pre-adjustment alternative minimum taxable income for the taxable year, even if the item is deductible in computing earnings and profits for the year. Thus, for example, capital losses in excess of capital gains for the taxable year are not deductible in computing adjusted current earnings for the taxable year.

(f) *Certain other earnings and profits adjustments*—(1) *Intangible drilling costs*. For purposes of computing adjusted current earnings, the amount allowable as a deduction for intangible drilling costs (as defined in section 263(c)) for amounts paid or incurred in taxable years beginning after December 31, 1989, is determined as provided in

section 312(n)(2)(A). See section 56(h) for an additional adjustment to alternative minimum taxable income based on energy preferences for taxable years beginning after 1990.

(2) *Certain amortization provisions do not apply.* For purposes of computing adjusted current earnings, sections 173 (relating to circulation expenditures) and 248 (relating to organizational expenditures) do not apply to amounts paid or incurred in taxable years beginning after December 31, 1989. If an election is made under section 59(e) to amortize circulation expenditures described in section 173 over a three-year period, the expenditures to which the election applies are deducted ratably over the three-year period for purposes of computing taxable income, pre-adjustment alternative minimum taxable income, and adjusted current earnings.

(3) *LIFO inventory adjustments.* [Reserved]

(4) *Installment sales—(i) In general.* Adjusted current earnings are computed without regard to the installment method, except as provided in this paragraph (f)(4).

(ii) *Exception for prior dispositions.* Paragraph (f)(4)(i) of this section does not apply to any disposition in a taxable year beginning before January 1, 1990, that is taken into account under the installment method for purposes of computing pre-adjustment alternative minimum taxable income. Thus, for any disposition in a taxable year beginning before January 1, 1990, the installment method applies in computing adjusted current earnings for taxable years beginning after December 31, 1989, to the same extent it applies in determining pre-adjustment alternative minimum taxable income for the taxable year.

(iii) *Special rules for obligations to which section 453A applies—(A) In general.* The following special rules apply to any installment sale occurring in a taxable year beginning after December 31, 1989, that results in an installment obligation to which section 453A(a)(1) applies and with respect to which preadjustment alternative minimum taxable income is determined under the installment method. As explained in paragraph (f)(4)(iii)(B) of this section, for purposes of computing adjusted current earnings, a portion of the contract price is eligible for the installment method, and the remainder of the contract price is not eligible for the installment method. Payments under the obligation are allocated pro-rata between the two accounting methods.

(B) *Limitation on application of installment method.* Only a portion of the contract price of an installment sale

described in paragraph (f)(4)(iii)(A) of this section is eligible to be accounted for under the installment method for purposes of computing adjusted current earnings. The portion eligible for the installment method is equal to the total contract price of the sale multiplied by the applicable percentage (as determined under section 453A(c)(4)) for the taxable year of the sale. The remainder of the contract price is not eligible to be accounted for under the installment method for purposes of computing adjusted current earnings. The gross profit ratio is determined without regard to this bifurcated treatment of the sale.

(C) *Treatment of the ineligible portion.* The gain on the sale that is taken into account in the taxable year of the sale for purposes of computing adjusted current earnings is equal to the gross profit ratio multiplied by the entire portion of the contract price that is ineligible for the installment method.

(D) *Treatment of the eligible portion.* For purposes of calculating adjusted current earnings, the amount of gain recognized in a taxable year on the portion of the contract price that is eligible for the installment method is equal to—

- (1) The amount of payments received during the taxable year, multiplied by
- (2) The applicable percentage for the taxable year of the sale, multiplied by
- (3) The gross profit ratio.

(E) *Coordination with the pledge rule.* For purposes of determining the amount of payments received during the taxable year under paragraph (f)(4)(iii)(D), the rules of section 453A(d) (relating to the treatment of certain pledge proceeds as payments) apply. This includes the rules under section 453A(d)(3) that relate to treating later payments as receipts of amounts on which tax has already been paid.

(F) *Example.* The following example illustrates the provisions of this paragraph (f)(4)(iii):

(1) On January 1, 1990, corporation A, a calendar-year taxpayer, sells a building with an adjusted basis for purposes of computing adjusted current earnings of \$10 million, for \$5 million and an installment obligation bearing adequate stated interest with a principal amount of \$20 million. The installment obligation calls for 4 annual payments of \$5 million on January 1 of 1991, 1992, 1993, and 1994. A does not elect out of the installment method, and disposes of no other property under the installment method during 1990. No gain with respect to the sale is recaptured pursuant to section 1250.

(2) The gross profit percentage for purposes of computing adjusted current earnings on the sale is 60 percent, computed as follows: gross profit of \$15 million (\$25 million contract price less \$10 million adjusted basis) divided

by \$25 million contract price. The applicable percentage on the sale is 75 percent, computed as follows: \$15 million (\$20 million of installment obligations arising during and outstanding at the end of 1990 less \$5 million) divided by \$20 million of installment obligations arising during and outstanding at the end of 1990. See section 453A(c)(4). The portion of the contract price eligible for accounting under the installment method for purposes of computing adjusted current earnings is \$18.75 million, or \$25 million total contract price times applicable percentage of 75 percent. The portion of the contract price ineligible for the installment method is \$6.25 million, or \$25 million less \$18.75 million.

(3) In computing adjusted current earnings for 1990, A must include \$3.75 million of the gain on the sale. This amount is equal to the portion of the contract price that is ineligible for the installment method times the gross profit ratio, or \$6.25 million times 60 percent. A must also include \$2.25 million of gain from the \$5 million payment received in 1990. This amount is computed as follows: the eligible portion of the payment, \$3.75 million (\$5 million payment times the applicable percentage of 75 percent), times the gross profit ratio of 60 percent. Thus, the total amount of gain from the sale that A must include in adjusted current earnings for 1990 is \$6 million (\$3.75 million of gain from the portion of the contract price that is not eligible for the installment method, plus \$2.25 million of gain from the 1990 payment).

(4) A does not pledge or otherwise accelerate payments on the note in any other taxable year. In computing adjusted current earnings for 1991, 1992, 1993, and 1994, A therefore includes \$2.25 million of gain on the installment sale, computed as follows: \$5 million payment times the applicable percentage of 75 percent, times the gross profit ratio of 60 percent.

(g) *disallowance of loss on exchange of debt pools.* [Reserved]

(h) *Policy acquisition expenses of life insurance companies—(1) In general.* This paragraph (h) addresses the treatment of policy acquisition expenses of life insurance companies in determining adjusted current earnings. Policy acquisition expenses are those expenses that, under generally accepted accounting principles in effect at the time the expenses are incurred, are considered to vary with and to be primarily related to the acquisition of new and renewal insurance policies. Generally, these acquisition expenses must be capitalized and amortized for purposes of adjusted current earnings over the reasonably estimated life of the acquired policy, using a method that provides a reasonable allowance for amortization. This method of amortization is treated as if it applied to all taxable years in determining the amount of policy acquisition expenses deducted for adjusted current earnings. The rules in this paragraph (h) apply to

any life insurance company, as defined in section 816(a).

(2) *Reasonably estimated life.* The reasonably estimated life of an acquired policy is determined based on the facts with respect to each policy (such as the age, sex and health of the insured), and the company's experience (such as mortality, lapse rate and renewals) with similar policies. A company may treat as the reasonably estimated life of an acquired policy the period for amortizing expenses of the acquired policy that would be required by the Financial Accounting Standards Board (FASB) at the time the acquisition expenses are incurred. If the FASB has not established such a period, the period for amortizing acquisition expense of an acquired policy under guidelines issued by the American Institute of Certified Public Accountants in effect at the time the acquisition expenses are incurred may be treated as the reasonably estimated life of the acquired policy.

(3) *Reasonable allowance for amortization.* For purposes of determining a reasonable allowance for amortization, a company may use a method that amortizes acquisition expenses in the same proportion that gross premiums and gross investment income for the taxable year bear to total anticipated receipts of gross premiums (including anticipated renewal premiums) and gross investment income to be realized over the reasonably estimated life of the policy.

(4) *Safe harbor for public financial statements.* Any company that is required to file with the Securities and Exchange Commission (SEC) a financial statement with respect to the taxable year will be treated as having complied with paragraph (h)(1) of this section if it accounts for acquisition expenses for adjusted current earnings purposes in the same manner as it accounts for those expenses on its financial statements filed with the SEC.

(i) [Reserved]

(j) *Depletion.* For purposes of computing adjusted current earnings, the allowance for depletion with respect to any property placed in service in a taxable year beginning after December 31, 1989 is determined under the cost depletion method of section 611.

(k) *Treatment of certain ownership changes.—In general.* In the case of any corporation that has an ownership change as defined in paragraph (k)(2) of this section in a taxable year beginning after December 31, 1989, and that also has a net unrealized built-in loss (as defined in paragraph (k)(3) of this section) immediately before the ownership change, the adjusted basis of each asset of the corporation for

purposes of computing adjusted current earnings following the ownership change shall be its proportionate share (determined on the basis of the respective fair market values of each asset) of the fair market value of the assets of the corporation immediately before the ownership change. The rules of § 1.338(b)-2T(b), if otherwise applicable to the transaction, are applied in making this allocation of basis. If such rules apply, the limitations of §§ 1.338(b)-2T(c) (1) and (2) also apply in allocating basis under this paragraph (k)(1).

(2) *Definition of ownership change.* A corporation has an ownership change for purposes of section 56(g)(4)(G) (i) and this paragraph (k) if there is an ownership change under section 382(g) for purposes of computing the corporation's amount of taxable income that may be offset by pre-change losses or the regular tax liability that may be offset by pre-change credits. See § 1.382-2T for rules to determine whether a corporation has an ownership change. Accordingly, in order for an ownership change to occur for purposes of this paragraph (k), a corporation must be a loss corporation as defined in § 1.382-2T(f)(1). In determining whether the corporation is a loss corporation, the determination of whether there is a net unrealized built-in loss is made by using the aggregate adjusted basis of the assets of the corporation used in computing taxable income. The aggregate adjusted basis of the corporation's assets for purposes of computing adjusted current earnings is not relevant in determining whether the corporation is a loss corporation. See part (iv) of the example in paragraph (k)(4) of this section.

(3) *Determination of net unrealized built-in loss immediately before an ownership change.* In order to determine whether it has a net unrealized built-in loss for purposes of section 56(g)(4)(G)(ii) and paragraph (k)(1) of this section, a corporation that has an ownership change as defined in paragraph (k)(2) of this section must use the aggregate adjusted basis of its assets that it uses in computing its adjusted current earnings. The rules of section 382 (including sections 382(h)(3)(B)(i) and 382(h)(8)) otherwise apply in determining whether the corporation has a net unrealized built-in loss.

(4) *Example.* The following example illustrates the provisions of this paragraph (k):

(i) Individual A has owned all the issued and outstanding stock of corporation L for the past 5 years. A sells all of his stock in L to unrelated individual B. On the date of the

sale, L owns the following assets (all numbers are in millions):

| Asset | Adjusted basis for computing taxable income | Adjusted basis for computing adjusted current earnings | Fair market value |
|--------|---|--|-------------------|
| x..... | \$45 | \$50 | \$50 |
| y..... | 55 | 60 | 30 |
| z..... | 10 | 10 | 20 |
| | \$110 | \$120 | \$100 |

For purposes of computing taxable income, L has a \$500 million net operating loss carryforward to the taxable year in which the sale occurs. Therefore, L is a loss corporation. As a result of the transfer of shares of L from A to B, L has had an ownership change.

(ii) L has no net unrealized built-in loss for purposes of computing taxable income because the amount by which the aggregate adjusted basis of its assets for that purpose exceeds their fair market value is \$10 million, which is less than 15 percent of their fair market value and is not greater than \$10 million. See section 381(h)(3)(B)(i). L, however, does have a net unrealized built-in loss for purposes of computing adjusted current earnings because the aggregate adjusted basis of its assets for the purpose exceeds their fair market value by \$20 million, and that amount is greater than \$10 million.

(iii) Under paragraph (k)(1) of this section, L must restate the adjusted basis of its assets for purposes of computing adjusted current earnings to their fair market values, as follows (all numbers are in millions):

| Asset | New adjusted basis |
|--------|--------------------|
| x..... | \$50 |
| y..... | 30 |
| z..... | 20 |

L must use these new adjusted bases for all purposes in determining adjusted current earnings, including computing depreciation and any gain or loss on disposition.

(iv) If L did not have the net operating loss carryforward, and had no other loss or credit carryovers or other attributes described in § 1.382-2T(f)(1) for purposes of computing the amount of its taxable income that may be offset by pre-change losses or its regular tax liability that may be offset by pre-change credits, it would not have been a loss corporation on the date of the sale and therefore would not be treated as having had an ownership change for purposes of computing adjusted current earnings. This would be true even though L had a net unrealized built-in loss for purposes of computing adjusted current earnings. Therefore, this paragraph (k) would not have applied.

(l) [Reserved]

(m) *Adjusted current earnings of foreign corporations.* [Reserved]

(n) *Adjustment for adjusted current earnings of consolidated groups—(1) Positive adjustments.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of a consolidated group (as defined in § 1.1502-1T) is increased by 75 percent of the excess, if any, of—

- (i) The consolidated adjusted current earnings for the taxable year, over
- (ii) The consolidated pre-adjustment alternative minimum taxable income for the taxable year.

(2) *Negative adjustments—(i) In general.* The alternative minimum taxable income of a consolidated group is decreased, subject to the limitation of paragraph (n)(2)(ii) of this section, by 75 percent of the excess, if any, of the consolidated pre-adjustment alternative minimum taxable income over consolidated adjusted current earnings.

(ii) *Limitation on negative adjustments.* The amount of the negative adjustment for any taxable year shall be limited to the excess, if any, of—

(A) The aggregate increases in the alternative minimum taxable income of the group in prior years under this section, over

(B) The aggregate decreases in the alternative minimum taxable income of the group in prior years under this section.

(3) *Definitions—(i) Consolidated pre-adjustment alternative minimum taxable income.* Consolidated pre-adjustment alternative minimum taxable income is the consolidated taxable income (as defined in § 1.1502-11) of a consolidated group for the taxable year, determined with the adjustments provided in sections 56 and 58 (except for the adjustment for adjusted current earnings and the alternative tax net operating loss determined under section 56(a)(4)) and increased by the preference items described in section 57.

(ii) *Consolidated adjusted current earnings.* The consolidated adjusted current earnings of a consolidated group is the consolidated pre-adjustment alternative minimum taxable income of the consolidated group for the taxable year, adjusted as provided in section 56(g) and this section.

(4) *Example.* The following example illustrates the provisions of this paragraph (n):

(i) P is the common parent of a consolidated group. In 1990, the group has consolidated pre-adjustment alternative minimum taxable income of \$1,400,000 and consolidated adjusted current earnings of \$1,600,000. Thus, the group has a consolidated adjustment for adjusted current earnings for 1990 of \$150,000 (75 percent of the \$200,000 excess of consolidated adjusted current earnings over consolidated pre-adjustment

alternative minimum taxable income), and alternative minimum taxable income of \$1,550,000 (\$1,400,000 plus \$150,000).

(ii) In 1991, the group has consolidated pre-adjustment alternative minimum taxable income of \$1,500,000 and consolidated adjusted current earnings of \$1,100,000. Thus, the group can reduce its alternative minimum taxable income by \$150,000. The potential negative adjustment of \$300,000 (75 percent of the \$400,000 excess of consolidated pre-adjustment alternative minimum taxable income over consolidated adjusted current earnings) is limited to the \$150,000 consolidated adjustment for adjusted current earnings taken into account in 1990.

(o) [Reserved]

(p) *Effective dates for corporate partners in partnerships—(1) In general.* The provisions of this section apply to a corporate partner's distributive share of items of income and expense from a partnership for any taxable year of the partnership ending within or with any taxable year of the corporate partner beginning after December 31, 1989.

(2) *Application of effective dates.* Solely for purposes of the effective date provisions of this section, a partnership event (such as placing property in service, paying or incurring a cost, or closing an installment sale) is deemed to occur on the last day of the partnership's taxable year.

(3) *Example.* The following example illustrates the provisions of this paragraph (p):

(i) X is a calendar-year corporation that is a partner in P, an accrual-basis partnership with a taxable year ending March 31. During P's taxable year ending March 31, 1990, P earned ratably throughout the year interest income on tax-exempt obligations. In addition, P incurred intangible drilling costs in November 1989 and in February 1990.

(ii) X's adjusted current earnings for 1990 includes X's distributive share of the interest on the tax-exempt obligations earned by P for its taxable year ending March 31, 1990. This is true even though P earned a portion of the interest prior to January 1, 1990.

(iii) For purposes of computing X's adjusted current earnings for 1990, the adjustment provided in paragraph (f)(1) of this section applies to X's distributive share of P's November 1989 and February 1990 intangible drilling costs.

(q) *Treatment of distributions of property to shareholders—(1) In general.* If a distribution of an item of property by a corporation with respect to its stock gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to that item of property (including the adjustment described in section 312(c) with respect to liabilities to which the item is subject or which are assumed in connection with the distribution) are combined for purposes of determining the corporation's

adjusted current earnings for the taxable year. If the amount included in pre-adjustment alternative minimum taxable income with respect to a distribution of an item of property exceeds the net increase in earnings and profits caused by the distribution, pre-adjustment alternative minimum taxable income is not reduced in computing adjusted current earnings. If the net increase in earnings and profits caused by a distribution of an item of property exceeds the amount included in pre-adjustment alternative minimum taxable income with respect to the distribution, that excess is added to pre-adjustment alternative minimum taxable income in computing adjusted current earnings.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (q).

(i) *Example 1.* K corporation distributes property with a fair market value of \$150 and an adjusted basis of \$100. The adjusted basis is the same for purposes of computing taxable income, pre-adjustment alternative minimum taxable income, adjusted current earnings, and earnings and profits. Under section 312(a)(3), as modified by section 312(b)(2), K decreases its earnings and profits by the fair market value of the property, or \$150. Under section 312(b)(1), K increases its earnings and profits by the excess of the fair market value of the property over its adjusted basis, or \$50. As a result of the distribution, there is a net decrease in K's earnings and profits of \$100. K recognizes \$50 of gain under section 311(b) as a result of the distribution as if K sold the property for \$150. K thus has no amount permanently excluded from pre-adjustment alternative minimum taxable income that is taken into account in determining current earnings and profits, and thus has no adjustment under paragraph (c)(1) of this section.

(ii) *Example 2.* The facts are the same as in example 1, except that the distribution shareholder assumes a \$190 liability in connection with the distribution. Under section 312(c)(1), K must adjust the adjustments to its earnings and profits under section 312(a) and (b) to account for the liability the shareholder assumes. K adjusts the \$100 net decrease in its earnings and profits to reflect the \$190 liability, resulting in an increase in its earnings and profits of \$90. Because section 311(b)(2) makes the rules of section 336(b) apply, the fair market value of the property is not less than the amount of the liability, or \$190. K therefore is treated as if it sold the property for \$190, recognizing \$90 of gain. K thus has no amount permanently excluded from pre-adjustment alternative minimum taxable income that is taken into account in determining current earnings and profits, and thus has no adjustment under paragraph (c)(1) of this section.

Par. 6. Section 1.926 (a)-1T(b)(1) is revised to read as follows:

§ 1.926(a)-1T Temporary Regulations; Distributions to shareholders.

(b) *Order of distributions*—(1) *In general.* For guidance, see § 1.926(a)-1(b)(1).

Par. 7. Section 1.926(a)-1 is added to read as follows:

§ 1.926(a)-1 Distributions to shareholders.

(a) *Treatment of distributions.* [Reserved] For guidance, see § 1.926(a)-1T(a).

(b) *Order of distribution*—(1) *In general*—(i) *Distributions by a FSC received by a shareholder in a taxable year of the shareholder beginning before January 1, 1990.* Any actual distribution to a shareholder by a FSC (all references to a FSC in this section shall include a small FSC and a former FSC) that is received by the shareholder in a taxable year of the shareholder beginning before January 1, 1990, and made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

(A) Out of earnings and profits attributable to exempt foreign trade income determined solely because of operation of section 923(a)(4).

(B) Out of earnings and profits attributable to other exempt foreign trade income.

(C) Out of earnings and profits attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a)(1) or (2).

(D) Out of earnings and profits attributable to section 923(a)(2) non-exempt income, and

(E) Out of other earnings and profits. (ii) *Distributions by a FSC received by a shareholder in a taxable year of the shareholder beginning after December 31, 1989.* Any actual distribution to a shareholder by a FSC that is received by the shareholder in a taxable year beginning after December 31, 1989, and that is made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

(A) Out of earnings and profits attributable to exempt foreign trade income determined solely because of the operation of section 923(a)(4).

(B) Out of earnings and profits attributable to foreign trade income (other than exempt foreign trade income determined solely because of the operation of section 923(a)(4)) allocable to the marketing of agricultural or horticultural products (or the providing of related services) by a qualified cooperative which is a shareholder of the FSC.

(C) Out of earnings and profits attributable to non-exempt foreign trade income and other exempt foreign trade income determined under either of the administrative pricing methods of section 925(a)(1) and (2). Distributions out of this classification will be made on a pro rata basis so that 15/23 (16/23 with regard to distribution to a non-corporate shareholder of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income. To the extent the distributions are out of earnings and profits attributable to the disposition of, or services related to, military property, 7.5/23 (8/23 with regard to distributions to a non-corporate shareholder) of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income.

(D) Out of earnings and profits attributable to other exempt foreign trade income determined under the transfer pricing method of section 925(a)(3).

(E) Out of earnings and profits attributable to section 923(a)(2) non-exempt income.

(F) Out of earnings and profits attributable to effectively connected income, as defined in section 245(c)(4)(B), and

(G) Out of other earnings and profits.

(2) *Determination of earnings and profits.* [Reserved] For guidance, see § 1.926(a)-1T(b)(1).

(c) *Definition of "former FSC".*

[Reserved] For guidance, see § 1.926(a)-1T(c).

(d) *Personal holding company income.* [Reserved] For guidance, see § 1.926(a)-1T(d).

(e) *Sale of stock if section 1248 applies.* [Reserved] For guidance, see § 1.926(a)-1T(e).

Dated: February 21, 1991.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved:
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91-6171 Filed 3-14-91; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8339]

RIN 1545-AN86

Treatment of Gain or Loss on Deemed Sale of Affected Target Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that add new § 1.338-6T. The temporary regulations supplement existing regulations by providing rules relating to the determination of the amount of gain or loss recognized by a target corporation on its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective March 14, 1991, and generally apply to transactions occurring on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Keith Medleau of the Office of Assistant Chief Counsel (Corporate) on 202-566-3551 (not a toll-free number). For foreign aspects, contact Ken Allison of the Office of Associate Chief Counsel (International) on 202-566-6442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedures Act (5 U.S.C. 553). For this reason, the collections of information contained in § 1.338-6T have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number (1545-1115). The estimated annual burden per respondent varies from 1.9 hours to 2.9 hours, depending on individual circumstances, with an estimated average of 2.4 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register*.

Background

General Information. This document adds new temporary regulations § 1.338-6T to part 1 of title 26 of the Code of Federal Regulations. The temporary regulations added by this document will remain in effect until superseded by later final regulations relating to these matters or, if earlier, three years after March 15, 1991.

This document addresses the situation in which the application of section 338 of the Internal Revenue Code of 1986 results in multiple levels of gain or loss recognition with respect to the same economic gain or loss. This document does not conform to the regulations under section 338 to other changes made by the Tax Reform Act of 1986 (the "1986 Act"), such as the repeal of old section 337 and conforming amendments to section 338. See, e.g., § 1.338-4T(k) (relating to the application of old section 337 to a deemed sale of assets).

The Operation of Section 338 and Multiple Taxation. Section 338 of the Code generally provides that, if a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect to have the target treated as if it (a) sold all of its assets (as "old target") at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (b) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by the purchasing corporation for target stock plus liabilities of target and other relevant items. Section 338 (a) and (b). A qualified stock purchase generally is any transaction or series of transactions in which stock of a corporation possessing at least 80 percent of the total voting power and value of the stock of such corporation is purchased by another corporation during a "12-month acquisition period." Sections 338 (d)(3) and (h)(1).

The section 338 election may be either an express or a deemed election. Under section 338(f)(1) of the Code, if a purchasing corporation makes an express section 338 election in connection with its qualified stock

purchase of the target, a section 338 election generally will be deemed to have been made by the purchasing corporation with respect to any other qualified stock purchase of a "target affiliate" within the "consistency period" defined in section 338(h)(4). A corporation generally is treated as a target affiliate of the target if each of such corporations was a member of an affiliated group that had the same common parent at any time during so much of the consistency period as ends on the acquisition date of the target. Sections 338(h) (5) and (6) and § 1.338-5T(c)(1). A target affiliate with respect to which there is a deemed election is an "affected target." See §§ 1.338-4T(b) (3) and (9).

Prior to the 1986 Act, the deemed sale of assets of the target generally was governed by the statutory nonrecognition rule in old section 337, which was a codification of the General Utilities doctrine. Under old section 337, subject to certain exceptions (e.g., section 1245), no gain or loss was recognized by the target on the deemed sale of its assets. § 1.338-4T(k)(1) Q and A 1. The 1986 Act repealed old section 337 as part of the repeal of the General Utilities doctrine, with the result that generally all gain or loss realized on the deemed sale of the assets of the target is recognized. As a consequence, if an election under section 338(g) is made without a corresponding joint election under section 338(h)(10), a target owning stock of an affected target will recognize gain or loss on the deemed sale of that stock and, thereafter, the affected target also will recognize gain or loss on the deemed sale of its assets. The operation of section 338 in such circumstances would result in multiple levels of gain or loss recognition with respect to the same economic gain or loss. There is no indication that, as a consequence of the repeal of General Utilities, Congress intended to tax economic gain (loss) at the corporate level in these circumstances more than once. See Conf. Rep. No. 841, 99th Cong., 2nd Sess. II-204 (1986).

For example, assume purchasing corporation, P, purchases in a single transaction all of the stock of domestic target, DT. DT is the common parent of a consolidated group and therefore DT and P cannot make a section 338(h)(10) election with respect to DT and its subsidiaries. DT's sole asset consists of all of the stock of a domestic target affiliate, DT1. The stock of DT1 has a basis of \$50 and a fair market value of \$150. DT1's assets have a basis of \$50 and a fair market value of \$150. P makes an express section 338 election with respect to its qualified stock purchase of

DT, which triggers a deemed sale of old DT's assets (the DT1 stock) on which DT recognizes gain of \$100 and a deemed purchase by new DT of all of the DT1 stock. New DT's deemed purchase constitutes a qualified stock purchase of DT1 stock. The express election for DT causes a deemed election for DT1 under section 338(f)(1) of the Code, since purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). Therefore, old DT1 is deemed to sell its assets and, as a result, also recognizes gain of \$100. See § 1.338-4T(c)(3) Q and A 1. Thus, \$200 of gain would be recognized with respect to the same \$100 of economic gain.

Explanation of Provisions

The recognition of gain or loss by a target on the deemed sale of the stock of an affected target, in addition to the recognition of gain or loss by such affected target on the deemed sale of its assets, is an unintended effect of the repeal of General Utilities. Accordingly, temporary regulations § 1.338-6T is added to provide that no gain or loss is recognized by the target on the deemed sale of stock of an affected target with respect to which the target is a § 1.338-6T shareholder if an election under section 338(g) (but not an election under section 338(h)(10)) is made with respect to the affected target. Under new § 1.338-6T, a § 1.338-6T shareholder is a target that directly owns stock in an affected target that meets the requirements of section 1504(a)(2) (i.e., 80-percent vote and value test). Where the common parent of a consolidated group is a target, the term § 1.338-6T shareholder also includes a target that directly owns stock in an affected target not meeting the requirements of section 1504(a)(2) if both the target and affected target are members of the common parent's consolidated group. See section 338(i). The determination and allocation of the aggregate deemed sale price and adjusted grossed-up basis under §§ 1.338-4T(h) and 1.338 (b)-2T, respectively, will be made by taking into account the stock in all affected targets, including stock with respect to which gain or loss is not recognized under new § 1.338-6T.

New § 1.338-6T does not provide an exception from multiple taxation in the case of a deemed sale of stock of an affected target by a target that does not meet the definition of a § 1.338-6T shareholder. One case not covered by the new temporary regulations arises where a domestic target (DT) owns all of the stock of two domestic target

affiliates (DT1 and DT2) and each of the two target affiliates directly owns 50 percent of the total voting power and value of the stock of another domestic target affiliate (DT3). If a section 338 election is made with respect to a qualified stock purchase of DT, then DT1, DT2 and DT3 would be affected targets. DT is a § 1.338-6T shareholder of DT1 and DT2, but, if DT is not the common parent of an affiliated group filing a consolidated return, neither DT1 nor DT2 would be a § 1.338-6T shareholder of DT3.

The treatment of some cases where the target is not a § 1.338-6T shareholder may be addressed in regulations under section 336(e) or section 338(h)(10), as revised by the 1986 Act. Section 336(e) grants the Secretary authority to prescribe regulations under which a sale, exchange or distribution of a corporation's stock is treated as a disposition of the corporation's assets and any gain (or loss) on the disposition of the stock is ignored. Section 338(h)(10) grants the Secretary authority to prescribe regulations extending the availability of section 338(h)(10) to affiliated groups that do not file consolidated returns. It is expected, however, that any regulations issued under either section 336(e) or 338(h)(10) will apply only to transactions occurring after the regulations are issued. Comments are requested concerning the scope of any relief from multiple taxation in cases not covered by this regulation and, more generally, the scope of any new rules under sections 336(e) and 338(h)(10).

Paragraph (d) of new § 1.338-6T sets forth situations in which gain or loss is recognized on the deemed sale of affected target stock.

Under paragraph (d)(2) of new § 1.338-6T, gain or loss is recognized with respect to stock of a foreign affected target deemed sold by a domestic target.

Under paragraph (d)(3) of new § 1.338-6T, effectively connected gain or loss is recognized on the deemed sale by a foreign target of the stock of a foreign affected target.

Under paragraph (d)(4) of new § 1.338-6T, gain attributable to earnings and profits described in section 953(d)(4)(B) is recognized on the deemed sale by a domestic corporation of the stock of an affected target that is a corporation electing under section 953(d). This treatment of the deemed sale of the stock of a corporation electing under section 953(d) is consistent with the treatment of an actual disposition of stock under that provision by way of sale or liquidation. Similarly, paragraph (d)(5) of new

§ 1.338-6T states that, upon the deemed sale of the stock of a DISC (or former DISC) affected target, gain (but not loss) is recognized in an amount equal to the lesser of the gain realized on the DISC stock or the amount of the accumulated DISC income. This rule is consistent with the current treatment of a DISC upon its sale or the termination of its separate corporate existence.

Paragraph (d)(6) of new § 1.338-6T provides that if an asset whose adjusted basis exceeds its fair market value is contributed or transferred to an affected target in a carryover basis transaction and a purpose of the transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of that affected target's stock, the gain (or loss) recognized will be determined as if the asset had not been contributed or transferred.

Paragraph (e) of new § 1.338-6T provides effective dates. Generally, the rules of new § 1.338-6T apply to any qualified stock purchase for which a section 338 election is made on or after March 14, 1991. Special rules are provided that extend the application of § 1.338-6T on an elective basis to certain qualified stock purchases for which an election was made before March 14, 1991.

Transitional rules are provided in paragraph (f) of new § 1.338-6T that allow an extension of time to make an election under section 338 if neither a section 338(g) election nor a protective carryover election has been made for a qualified stock purchase and the last date for making either election is on or after March 14, 1991. The transitional rules also permit, if the consent of the Commissioner is obtained, a section 338(g) election or revocation of a regular exclusion election for certain qualified stock purchases.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Keith Medleau of the Office of Chief Counsel, Internal Revenue Service, except that the principal author of § 1.338-6T(d) is Ken Allison of that office. However, other personnel from the Internal Revenue Service and the Department of the Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.301-1 through 1.385-6

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.338-6T also issued under 26 U.S.C. 338.

Par. 2. New § 1.338-6T is added to read as follows:

§ 1.338-6T Treatment of gain or loss on deemed sale of affected target stock (temporary).

(a) *Scope.* This section prescribes rules relating to the treatment of gain or loss realized by a target on the deemed sale of stock of an affected target where an election under section 338(g) (but not an election under section 338(h)(10)) is made with respect to the affected target.

(b) *Definitions and nomenclature—(1) In general.* The definitions and nomenclature in §§ 1.338-1T, 1.338-4T (as modified by § 1.338-5T(b)) and 1.338-5T also apply to this section.

(2) *§ 1.338-6T shareholder.* A § 1.338-6T shareholder is a target that directly owns stock in an affected target that meets the requirements of section 1504(a)(2). A § 1.338-6T shareholder is also a target that directly owns stock in an affected target if both the target and affected target are members of a consolidated group filing a final consolidated return described in § 1.338-1T(f)(2)(ii).

(c) *General Rule—(1) Deemed sale of, affected target by a § 1.338-6T*

shareholder. Except as provided in paragraph (d) of this section, if an express or deemed election under section 338 is made with respect to the qualified stock purchase of a target, no gain or loss is recognized by the target on the deemed sale of stock of an affected target with respect to which the target is a § 1.338-6T shareholder.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. P purchases in a single transaction all of the outstanding stock of DT. DT's sole asset consists of all of the outstanding stock of DT1. The stock of DT1 has a basis of \$50 and a fair market value of \$150. DT1's assets have a basis of \$50 and a fair market value of \$150. P makes an express section 338 election with respect to DT. Under § 1.338-4T(c)(3) *Q and A 1*, old DT is deemed to sell all of DT's assets (the DT1 stock), resulting in old DT's realizing gain of \$100. New DT is deemed to purchase those assets, and its deemed purchase of all the DT1 stock constitutes a qualified stock purchase of DT1 stock. The express election for DT causes a deemed election for DT1 under section 338(f)(1) of the Code, because purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). Because DT is a § 1.338-6T shareholder of affected target DT1, DT's \$100 of gain on the deemed sale of DT1 stock is not recognized. However, DT1 recognizes gain of \$100 on the deemed sale of its assets.

Example 2. DT owns all of the outstanding stock of DT1 and DT2. DT1 and DT2 each directly own 50 percent of the vote and value of DT3 stock. DT is the common parent of a consolidated group and the group's final return is a consolidated return. See § 1.338-1T(f)(2)(ii). DT is a § 1.338-6T shareholder of affected targets DT1 and DT2. Even though neither DT1 nor DT2 directly owns an amount of stock meeting the requirements of section 1504(a)(2), because DT1, DT2 and DT3 are members of DT's consolidated group, DT1 and DT2 are § 1.338-6T shareholders of DT3. Therefore, no gain or loss is recognized by DT, DT1 or DT2 on the respective deemed sales of affected target stock by each of the corporations.

(d) *Situations in which gain or loss is recognized—(1) In general.* Notwithstanding paragraph (c) of this section, gain or loss is recognized to the extent provided in this paragraph (d).

(2) *Deemed sale of foreign affected target by a domestic target.* Gain or loss is recognized by a domestic target on the deemed sale of stock in a foreign affected target but for the filing of a regular exclusion election under § 1.338-5T(c)(2). For the proper treatment of such gain or loss, see e.g., sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338-5T.

(3) *Deemed sale producing effectively connected income.* Gain or loss is recognized by a foreign target on the

deemed sale of the stock of a foreign affected target to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(4) *Deemed sale of insurance company affected target electing under section 953(d).* Gain (but not loss) is recognized by a domestic target on the deemed sale of the stock of an affected target that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(5) *Deemed sale of DISC affected target.* Gain (but not loss) is recognized by a foreign or domestic target on the deemed sale of the stock of an affected target that is a DISC or a former DISC (as defined in section 992 (a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain will be included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(6) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to an affected target as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such affected target's stock, the gain or loss recognized under this paragraph (d) will be determined as if such asset had not been contributed or transferred.

(7) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

Example. (i) P purchases in a single transaction all of the outstanding stock of DT. DT's sole asset consists of all of the outstanding stock of FT1. FT1's sole asset consists of all of the outstanding stock of FT2. The stock of FT1 has a basis of \$25 and a fair market value of \$150. The stock of FT2 has a basis of \$75 and a fair market value of \$150. FT1 and FT2 each have \$50 of accumulated earnings and profits for purposes of section 1248 (c) and (d). FT2's assets have a basis of \$125 and a fair market value of \$150, and their sale would not generate subpart F income under section 951. The sale of the stock of FT2 or of FT2's assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes an express section 338 election with respect to DT, which triggers a deemed sale of old DT's assets (the FT1 stock). New DT's deemed purchase of all of the FT1 stock constitutes a qualified stock purchase of the

FT1 stock. No regular exclusion election for FT1 and FT2 is filed under § 1.338-5T(c)(2). The express election for DT causes a deemed election for FT1 under section 338(f)(1), because purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). See § 1.338-4T(c)(3) *Q and A 1*. The deemed election for FT1, in turn, triggers a deemed sale of FT1's asset (the stock of FT2) and a deemed election for FT2 (and deemed sale of FT2's assets), for the reasons described above with respect to FT1.

(iii) DT recognizes \$125 of gain on the deemed sale of the FT1 stock under paragraph (d)(2) of this section. FT1's \$75 of gain on the deemed sale of the FT2 stock is not recognized under paragraph (c) of this section. FT2 recognizes \$25 of gain on the deemed sale of its assets. The \$125 gain DT recognizes on the deemed sale of the FT1 stock is included in the income of DT as a dividend in its entirety under the rules of section 1248, because FT1 and FT2 have sufficient accumulated and deemed sale earnings and profits for full recharacterization (\$50 of accumulated earnings and profits in FT1, \$50 of accumulated earnings and profits in FT2, and \$25 of deemed sale earnings and profits in FT2). § 1.338-5T(g). For purposes of sections 901 through 908 of the Code, the source and foreign tax credit limitation basket of \$25 of the recharacterized gain on the deemed sale of the FT1 stock will be determined under section 338(h)(16).

(e) *Effective date—(1) In general.* This section applies to any qualified stock purchase for which a section 338 election is made (or deemed to have been made) on or after March 14, 1991.

(2) *Elective application of this section to prior section 338 elections.* If an express or deemed election under section 338 was made before March 14, 1991, for a qualified stock purchase for which the acquisition date is after December 31, 1986, the purchasing corporation may elect, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase, to have this section apply to such qualified stock purchase by filing an irrevocable transitional § 1.338-6T election in accordance with the procedural rules in paragraph (g) of this section. Any election made pursuant to this paragraph will apply to the qualified stock purchase of the target and all affected targets for which the acquisition date is after December 31, 1986, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase.

(f) *Transitional rules with respect to other elections under section 338—(1) In general.* This paragraph (f) applies to any qualified stock purchase for which the acquisition date is after December

31, 1986, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase.

(2) *Extension of time to make an election.* Notwithstanding § 1.338-1T(c)(1), if neither a section 338(g) election nor a protective carryover election under § 1.338-4T(f)(6) has been made for a qualified stock purchase and the last date for making either election (without regard to this sentence) is on or after March 14, 1991, the last day for making either election will not be earlier than July 12, 1991.

(3) *Revocation of certain regular exclusion elections.* Notwithstanding § 1.338-5T(c)(2)(v)(A), if a regular exclusion election under § 1.338-5T(c)(2) is made before May 13, 1991, in connection with a qualified stock purchase, the purchasing corporation may revoke the regular exclusion election if the purchasing corporation obtains the consent of the Commissioner.

(4) *Revocation of certain protective carryover elections.* Notwithstanding § 1.338-4T(f)(6)(i)(A), if a protective carryover election is made before May 13, 1991, for a qualified stock purchase, the purchasing corporation may revoke the protective carryover election and make a simultaneous section 338(g) election if the purchasing corporation obtains the consent of the Commissioner.

(5) *Other qualified stock purchases.* If a section 338(g) election was not made for qualified stock purchase and the last date for making the election was before March 14, 1991, the purchasing corporation may make a section 338(g) election for the qualified stock purchase if the purchasing corporation obtains the consent of the Commissioner.

(6) *Consent.* The consent required in paragraphs (f) (3), (4) and (5) of this section will be granted in the discretion of the Commissioner. Consent will be granted only if the purchasing corporation establishes to the satisfaction of the Commissioner—

(i) That a regular exclusion election was made or a section 338(g) election was not made, in either case, primarily because of a concern about multiple taxation affecting the buyer or the seller, and

(ii) That application of this section would provide relief from such multiple taxation.

If consent is granted, this section, including procedural rules similar to those provided in paragraph (g) of this section, will apply. A section 338(h)(10) election will not be allowed in connection with any election under section 338(g) for which consent is

granted. Consent should be applied for in the same manner as an advance ruling from the Internal Revenue Service, not later than July 12, 1991.

(g) *Procedural rules.* A transitional § 1.338-6T election must—

(1) Contain the name, address, and employer identification number of the purchasing corporation;

(1) Contain the name, address, and employer identification number of the original target;

(3) Be filed on or before July 12, 1991;

(4) Be filed where the section 338(g) election was originally filed;

(5) Have attached to it a copy of the previously filed section 338(g) election, but schedules of information, supplemental statements, and corrective statements described in § 1.338-1T(e)(1) need not be attached;

(6) State that "this transitional § 1.338-6T election is made pursuant to § 1.338-6T";

(7) Include a list that sets forth each affected target and its employer identification number, and indicates each original or affected target that is a § 1.338-6T shareholder. The list must indicate for each affected taxable year (as defined in § 1.338-1T(m)(12)) whether each such corporation is required to file amended return(s) and the place of such filing or (if applicable) whether an amended consolidated return or combined deemed sale return (see section 338(h)(15) and § 1.338-4T(k)(6)) must be filed;

(8) Include a declaration that "taxpayer agrees to extend the statute of limitations on assessment for two years from the date of the filing of this transitional § 1.338-6T election, to the extent the period of limitations would otherwise expire earlier, for any taxable year affected (within the meaning of § 1.338-1T(m)(12)) by the filing of this election";

(9) Include a declaration that either "amended return(s) will be timely filed by or for each target (including any affected target) for all affected taxable years, as defined in § 1.338-1T(m)(12), unless such requirement is waived in writing by the District Director or his delegate" or "the original returns are consistent with the provisions of § 1.338-6T"; and

(10) Be signed by a person who states under penalties of perjury that he or she is authorized to make the transitional § 1.338-6T election on behalf of the purchasing corporation.

There is need for immediate guidance with respect to the provisions contained in the Treasury decision. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and procedure

under section 553(b) of Title 5 of the United States Code or subject to the effective date limitation of section 553(d) of Title 5, United States Code.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: February 27, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-5822 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the

interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs

or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) Interest Rates.

| For valuation dates occurring in the month: | The values for i_k are: | | | | | | | | | | | | | | | |
|---|---------------------------|--------|-------|--------|-------|-------|-------|-------|-------|----------|----------|----------|----------|----------|----------|--------|
| | i_1 | i_2 | i_3 | i_4 | i_5 | i_6 | i_7 | i_8 | i_9 | i_{10} | i_{11} | i_{12} | i_{13} | i_{14} | i_{15} | i_u |
| April 1991.. | .075 | .07375 | .0725 | .07125 | .07 | .0675 | .0675 | .0675 | .0675 | .0675 | .0625 | .0625 | .0625 | .0625 | .0625 | .05875 |

Issued at Washington, DC, on this 11th day of March 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-6179 Filed 3-14-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Intervention in Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment clarifies that the Indiana Surface Mining Statute provisions concerning intervention in hearings allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background of the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated October 24, 1990, (Administration Record No. IND-0802),

the Indiana Department of Natural Resources (IDNR) responded to an OSM inquiry for either an explanation from the State regulatory authority about how the State program satisfied the required amendment at 30 CFR 914.16(c) or a program amendment submittal to resolve the outstanding requirement placed on Indiana by the Director in his amendment approval on May 16, 1985 (50 FR 20414-20415). The State response referenced the Administrative Adjudication Act at Indiana Code (IC) 4-21.5-3 and the Indiana Surface Mining Act at IC 13-4.1-4-5, IC 13-4.1-11-8(a) and IC 13-4.1-11-12 and explained how the existing program provisions allow intervention in a hearing by a person who has an interest which is or may be adversely affected by the outcome of the proceeding. OSM announced receipt of the proposed amendment in the January 18, 1991, *Federal Register* (56 FR 1960-1961), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 19, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15, and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

Indiana Code (IC) 4-21.5-3, IC 13-4.1-4-5, IC 13-4.1-8(a), and IC 13-4.1-11-12 and 310 IAC 0.5-1-14(a). Provisions for Intervention in Hearings.

On May 16, 1985, in the *Federal Register* (50 FR 20414-20415), the director found 310 IAC 0.5-1-14(a) less effective than the requirements of 43 CFR 4.1110 and required an amendment at 30 CFR 914.16(c) to allow intervention in a hearing by a person who has an interest which is or may be adversely affected by the outcome of the proceeding. The State had argued that the Indiana law and SMCRA confer "broad standing, such that persons who may be affected are allowed to intervene based on a statutory right of intervention." The Director found that although a provision in 310 IAC 0.5-1-14(a) granted intervention "where the right to intervene is otherwise conferred by law", that the regulation was not supported by the provisions of the Indiana surface mining law since no statutory provisions were cited by the State supporting its conclusion that its law confers broad standing and intervention rights (50 FR 20415). Then in 1987, Public Law 7-1987 amended the Indiana Surface Mining Act by adding Indiana Code (IC) 13-4.1-11-12 regarding provisions for intervention in hearing. This statute was approved by the Director in the April 1, 1987, *Federal Register* (52 FR 10371), where he found that the statutory changes were consistent with the amendment required by 30 CFR 914.16(c)(1), and provided statutory authority for Indiana to promulgate the required rule change. By letter dated October 24, 1990 (Administrative Record No. IND-0802), Indiana explained that this statute clarified existing provisions in IC 13-4.1-4-5 which provide opportunities for a formal hearing in permitting situations and in IC 13-4.1-11-8(a) which provides for a formal hearing in enforcement situations. Also included in the letter was a statement that "Thus, IC 13-4.1-11-12 clarifies already existing provisions and makes explicit the fact that the Indiana program allows for intervention in administrative and judicial hearings by persons who have interests which are or may be adversely affected by the outcome of a proceeding." After a review of the preamble discussions found in the May 16, 1985, *Federal Register* (50 FR 20414-20415) and the April 1, 1987, *Federal Register* (52 FR 10371), the significant portions of which are referenced in the discussion, the Director finds that the Indiana Surface Mining Act at IC 13-4.1-11-12 provides a right to intervention in hearings under state law, as

contemplated under the provision of 310 IAC 0.5-1-14(a) which allows a person to intervene "where the right to intervene is otherwise conferred by law." Therefore, taking into consideration the October 24, 1990, written explanation and statement made by the Indiana regulatory authority, the Director further finds that 310 IAC 0.5-1-14(a) in conjunction with IC 13-4.1-11-12 provide for intervention in hearings in a manner no less effective than 43 CFR part 4.1110. In light of this finding, the required amendment at 30 CFR 914.16(c) can be removed.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service responded that it had no objection to the proposed amendment.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the January 18, 1991, *Federal Register* (56 FR 1980-1991). The comment period closed on February 19, 1991. No comments were received, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment as submitted to OSM by Indiana and October 24, 1990. The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal Standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect of any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in

these categories and that EPA's concurrence is not required.

VI. Procedural determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM and exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1991.

Lewis M. McNay,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 914.15, is amended by adding a new paragraph (dd) to read as follows:

§ 914.15 Approval of regulatory program amendments.

(dd) The following amendment to the Indiana program as submitted to OSM

on October 24, 1990, is approved effective March 15, 1991. Indiana regulatory authority's explanation and statement concerning how the existing State program provisions satisfy the required amendment to allow intervention in a hearing by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

§ 914.16 [Amended]

3. 30 CFR 914.16 is amended by removing and reserving paragraph (c). [FR Doc. 91-6175 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Iranian Transactions Regulations, 31 CFR part 560 (the "Regulations"), to permit case-by-case licensing of the importation of Iranian-origin oil where the importation is related to the resolution or settlement of cases before the Iran-U.S. Claims Tribunal in The Hague (the "Tribunal"), or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel (202/535-6020), or Steven I. Pinter, Chief of Licensing (202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The regulations prohibit importation into the United States of goods and services of Iranian origin, and certain related transactions. The regulations are being amended to add § 560.513, authorizing the case-by-case licensing of Iranian-origin oil imports, provided the importer certifies that the oil to be imported is in resolution or settlement of an outstanding claim against Iran, or the proceeds of the sale of the oil are otherwise to be deposited in the Security Account at The Hague. This will permit licensing of oil imports in two specific circumstances neither of which involves any transfer of funds to Iran: (1) A settlement between Iran and a U.S. company with payment to the U.S. company entirely in oil instead of in funds from the security account; or (2) a

purchase of oil from Iran with all the funds in payment deposited in the Security Account.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 560

Imports, Iran, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 560 is amended as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The "Authority" citation for part 560 continues to read as follows:

Authority: 22 U.S.C. 2349aa-9; E.O. No. 12613, 52 FR 41940, October 30, 1987.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. A new § 560.513 is added at the end of subpart E to read as follows:

§ 560.513 Importation of Iranian-origin oil.

(a) Specific licenses will be issued on a case-by-case basis to permit the importation of Iranian-origin oil in connection with the resolution or settlement of cases before the Iran-United States Claims Tribunal in The Hague, established pursuant to the Algiers Accords of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of Iranian-origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to

identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated, for the account of the Government of Iran from the importation of Iranian-origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Security Account at The Hague.

Dated: February 25, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 6, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-6139 Filed 3-11-91; 3:51 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-18]

Special Local Regulations; International Bay City River Roar, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the International Bay City River Roar. This event will be held on the Saginaw River on the 12th, 13th, and 14th of July 1991, with an alternate date of 15 July 1991 if the weather is inclement on 14 July 1991.

EFFECTIVE DATE: These regulations become effective on 12 July 1991 and terminate on 15 July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 11 January 1991, the Coast Guard published a Notice of Proposed Rule Making in the Federal Register for these regulations (56 FR 1152). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves.

Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River between the Liberty Bridge and the Veterans Memorial Bridge on the 12th, 13th, and 14th of July 1991. This event will have an estimated 70 hydroplanes which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary section 100.35-T0918 to read as follows:

§ 100.35-T0918 International Bay City River Roar, Saginaw River, Bay City, MI.

(a) *Regulated Area.* That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south.

(b) *Special Local Regulations.*

(1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9:30 a.m. (EDST) until 4 p.m. (EDST) on 12 July 1991, from 9:30 a.m. (EDST) until 4:30 p.m. (EDST) on 13 July 1991, and from 8:30 a.m. (EDST) until 5:30 p.m. (EDST) on 14 July 1991.

(2) If the weather on 14 July 1991 is inclement, the river closure will be postponed until 8:30 a.m. (EDST) until 5:30 p.m. (EDST) on 15 July 1991. If postponed, notice will be given on 14 July 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-6221 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3913-12]

Designations and Classifications for Initial PM-10 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing designations and classifications for initial PM-10 nonattainment areas.

SUMMARY: Under section 107(d)(4)(B) of the Clean Air Act (Act) as amended by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, November 15, 1990), certain areas were designated as nonattainment for the pollutant PM-10 by operation of law upon enactment of the Amendments. These areas include "Group" I areas identified at 52 FR 29383 (August 7, 1987) and as subsequently clarified at 55 FR 45799 (October 31, 1990). Other areas (i.e., Group II or III areas) containing sites for which air quality monitoring data showed a violation of the national ambient air quality standards (NAAQS) for PM-10 prior to January 1, 1989 were also designated nonattainment for PM-10 by operation of law upon enactment. All other areas were designated unclassified for PM-10 by operation of law. By this notice, EPA is announcing, as required by section 107(d)(2) of the amended Act, all of those areas that were designated nonattainment for PM-10 by operation of law on November 15, 1990.

By this notice, EPA is also announcing, as required by section 188(a) of the amended Act, that all of the areas designated nonattainment for PM-10 by operation of law upon enactment of the Amendments were classified as moderate nonattainment areas at that time. In accordance with section 189(a)(2), States must submit State implementation plans (SIP's) for these areas by November 15, 1991.

DATES: Written comments on this notice must be received by April 15, 1991 at the address below.

EFFECTIVE DATE: These actions will become effective on May 14, 1991.

ADDRESSES: Written comments on this action should be addressed to Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

The air quality monitoring data supporting the nonattainment designation of the former Group II and III areas monitoring violations of the PM-10 NAAQS prior to January 1, 1989 are available from the respective EPA Regional Office which serves the State where the affected area is located. The addresses of the Regional Offices are as follows:

- State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203-2211
- Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278
- Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107
- Air Programs Branch, EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365
- Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604
- Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733
- Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101
- Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—Suite 500, Denver, CO 80202-2405
- Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105
- Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101

FOR FURTHER INFORMATION CONTACT:

Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (919) 541-0906 or FTS 629-0906 and at the address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1987 Revision of the NAAQS for Particulate Matter

On July 1, 1987, EPA revised the NAAQS for particulate matter, replacing total suspended particulates (TSP) as the indicator for particulate matter with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (called "PM-10") (52 FR 24634). At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's SIP development policy on PM-10 control strategies necessary to assure attainment and maintenance of the PM-10 NAAQS (see generally 52 FR 24672). The EPA

adopted a PM-10 SIP development policy dividing all areas of the country into three categories based on their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the PM-10 NAAQS and requiring substantial SIP adjustment were placed in Group I, (2) areas where attainment of the PM-10 NAAQS was possible and existing SIP's needed less adjustment were placed in Group II, (3) areas with a strong likelihood of attaining the PM-10 NAAQS and therefore needing adjustment only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682).

B. Prior Listing of and Modification to PM-10 Groups I, II, and III Areas

In accordance with the standards, policies, and regulations published on July 1, 1987 for revising and implementing the new particulate matter standards, EPA identified and listed the Group I and Group II areas in each State in a notice published on August 7, 1987 (52 FR 29383). That notice also indicated that any area of the country not listed as Group I or II was placed in Group III (52 FR 29383).

The EPA subsequently modified the listing for three areas and announced these revisions in a notice published on March 28, 1989 (54 FR 12620). Specifically, the 1989 notice indicated that Porter County, Indiana, was changed from Group I to Group II; Mono Basin, California, was changed from Group III to Group II; and Sandpoint, Idaho, was changed from Group I to Group II.

On October 31, 1990, EPA published technical corrections clarifying the boundaries of concern for some of the areas previously identified as Groups I and II areas (55 FR 45799). When EPA listed the initial groupings for areas in the August 1987 notice, the Groups I and II areas of concern were generally described as cities, towns, counties, or planning areas. The EPA indicated at that time that these descriptions were only the initial definitions of the areas to be investigated in the SIP development process and would be better defined later. The clarifications to the Groups I and II areas announced in October 1990 specifically defined and delineated the boundaries of the Groups I and Group II areas in question based on information obtained in the SIP development process and EPA guidelines and procedures for determining particulate matter boundaries. With respect to Group II areas, the October 1990 notice also set forth those areas containing a site for which air quality monitoring data

showed a violation of the NAAQS prior to January 1, 1989.¹

II. Today's Action

In the 1990 Amendments to the Clean Air Act, Congress used the PM-10 grouping scheme as the starting point for designating areas on nonattainment and unclassifiable for PM-10 by operation of law upon enactment of the Amendments. Group I areas identified in 52 FR 29383 (August 7, 1987) and as subsequently clarified in 55 FR 45799 (October 31, 1990) were designated nonattainment for PM-10 by operation of law² [see section 107(d)(4)(B)(i) of the amended Act]. Any other area (i.e., Group II or III areas) containing a site for which air quality monitoring data showed a violation of the NAAQS for PM-10 prior to January 1, 1989 was also designated nonattainment for PM-10 by operation of law upon enactment [see 107(d)(4)(B)(ii) of the amended Act]. All other areas were designated unclassifiable for PM-10 by operation of law [see 107(d)(4)(B)(iii) of the amended Act]. By this notice, EPA is announcing, as required by section 107(d)(2) of the amended Act, all of those areas that were designated nonattainment for PM-10 by operation of law on November 15, 1990.

Section 188(a) of the amended Act provides that those areas designated nonattainment for PM-10 upon enactment of the 1990 Clean Air Act Amendments were, by operation of law, classified as moderate PM-10 nonattainment areas at the time of their designation as nonattainment. By this notice, EPA is also announcing, as required by section 188(a) of the amended Act, that all of the areas designated as nonattainment for PM-10 by operation of law upon enactment of the Amendments were classified as moderate nonattainment areas at that time.

For administrative efficiency reasons, EPA will defer the ministerial act of formally codifying these PM-10 designations and classifications in 40 CFR part 81 until EPA codifies designations and classifications for other pollutants sometime within the next few months. This notice is provided now in order to make the announcements required by sections 107(d)(2) and 188(a) of the revised Act and to ensure that SIP development for

¹ Footnote 4 of the October 31, 1990 notice references Group II areas with violations of the PM-10 NAAQS.

² The notice published on October 31, 1990 (55 FR 45799) reflects the revisions announced in the notice published on March 28, 1989 (54 FR 12620).

the new PM-10 nonattainment areas proceeds in a timely fashion.

Neither of these actions is subject to the APA requirements for notice-and-comment rulemaking (5 U.S.C. 553-557) or section 307(d) of the amended Clean Air Act.³ Regarding designations, section 107(d)(2) of the amended Act requires the Administrator to publish a notice announcing designations occurring pursuant to section 107(d)(4), but explicitly provides that such announcement is not subject to APA notice-and-comment rulemaking procedures. Thus, Congress has expressly exempted the announcement of those areas designated nonattainment for PM-10 by operation of law under section 107(d)(4)(B) from the notice-and-comment procedural requirements of the APA.

Regarding classifications, section 188(a) of the amended Act requires the Administrator to publish a notice announcing the classifications of these areas. Section 188(a) explicitly states that the provisions of section 172(a)(1)(B) pertaining to lack of notice and comment and judicial review shall apply when the Administrator announces these classifications. Section 172(a)(1)(B), in turn, expressly exempts the classification announcement from the notice-and-comment procedures set forth in 5 U.S.C. 553-557 of the APA.

Nevertheless, for the purpose of providing an opportunity for public participation and avoiding error, EPA will entertain any comments on these actions that are received by April 15, 1991. The EPA's announcement of these

actions [for purposes of sections 107(d)(2) and 188(a)] will become effective on May 14, 1991. This will provide enough time for EPA to make any adjustments to the announcement that are appropriate in light of the comments.

III. Initial PM-10 Nonattainment Areas

The following list identifies all of those areas designated as nonattainment for PM-10 on November 15, 1990, upon enactment of the Clean Air Act Amendments of 1990. The EPA also announces, pursuant to section 188(a) of the amended Act, that all of these areas were classified as moderate by operation of law upon enactment of the Amendments.

PM-10 INITIAL NONATTAINMENT AREAS^{1,2}

| State and counties | Area of Concern |
|---|--|
| Alaska: | |
| Anchorage..... | Community of Eagle River. |
| Juneau..... | City of Juneau; Mendenhall Valley area. |
| Arizona: | |
| Cochise..... | Paul Spur/Douglas planning area: Township 23 south, Range 25 east (T23S, R25E); T23S, R26E; T24S, R25E; T24S, R26E; T23S, R27E; T24S, R27E; T23S, R28E; T24S, R28E. |
| Santa Cruz..... | Nogales planning area: The portions of the following Townships which are within the State of Arizona and lie east of 111° longitude: T23S, R13E; T23S, R14E; T24S, R13E; T24S, R14E; |
| Pima..... | Rillito planning area: Townships: T11S, R9E; T11S, R10E; T11S, R11E; T11S, R12E; T12S, R8E; T12S, R9E; T12S, R10E; T12S, R11E; T12S, R12E; Ajo planning area: Township T12S, R6W, and the following sections of Township T12S, R5W: a. Sections 6-8 b. Sections 17-20, and c. Sections 29-32 |
| Maricopa and Pinal..... | Phoenix planning area: The rectangle determined by, and including, T6N, R3W; T6N, R7E; T2S, R3W; T2S, R7E; T1N, R8E |
| Yuma..... | Yuma planning area: Townships: T7S-R21W, R22W; T8S-R21W, R22W, R23W, R24W; T9S-R21W, R22W, R23W, R24W, R25W; T10S-R21W, R22W, R23W, R24W, R25W. |
| Pinal and Gila..... | Hayden/Miami planning area: Townships: T4S, R16E T5S, R16E T6S, R16E plus the portion of Township T3S, R16E that does not lie on the San Carlos Indian Reservation, and the rectangle formed by, and including, Townships: T1N, R13E; T1N, R15E T6S, R13E; T6S, R15E |
| California: | |
| Inyo..... | Owens Valley planning area: Hydrologic Unit #18090103. |
| San Bernardino, Inyo, and Kern..... | Searles Valley planning area: Hydrologic Unit #1809005. |
| Mono..... | Mammoth Lake planning area: Includes the following sections: a. Sections 1-12, 17, and 18 of Township T4S, R28E; b. Sections 25-36 of Township T3S, R28E; c. Sections 25-36 of Township T3S, R27E; d. Sections 1-18 of Township T4S, R27E; and e. Sections 25 and 36 of Township T3S, R26E |
| Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera. | San Joaquin Valley planning area. |
| Riverside, Los Angeles, Orange, and San Bernardino. | South Coast Air Basin. |
| Riverside..... | Coachella Valley planning area. |
| Imperial..... | Imperial Valley planning area. |
| Colorado: | |
| Archuleta..... | Pagosa Springs. |

³ Regarding section 307(d) requirements, today's actions are not among the actions listed in section

307(d)(1) of the amended Act as being subject to the procedural requirements of section 307(d), nor has

the Administrator designated these actions as 307(d)(1)(U) of the amended Act.

PM-10 INITIAL NONATTAINMENT AREAS^{1,2}—Continued

| State and counties | Area of Concern |
|---|---|
| Adams, Denver, Arapahoe, Jefferson, Douglas, and Boulder. | Denver Metropolitan area: All of Denver, Jefferson, and Douglas Counties, Boulder County (excluding the Rocky Mountain National Park) and the Colorado automobile inspection and readjustment program portions of Adams and Arapahoe Counties. |
| San Miguel | Telluride. |
| Prowers | Lamar. |
| Pitkin | Aspen. |
| Fremont | Canon City. |
| Connecticut: | |
| New Haven | City of New Haven. |
| Idaho: | |
| Ada | Boise: Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line of T5N (12 Ter. Ses. 67); thence, west to the northwest corner T5N, R1W; Western Boundary—Thence, south to the northwest corner of T3N, R1W; thence, east to the northwest corner of section 4 of T3N, R1W; thence, south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of T1N, R1W; Southern Boundary—Thence, east to the southwest corner of section 33 of T1N, R4E; Eastern Boundary—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River. |
| Shoshone | City of Pinehurst. |
| Bannock and Power | City of Pocatello. |
| Bonner | County. |
| Illinois: | |
| Cook | a. Lyons Township b. The area bounded on the north by 79th Street, on the west by Route 57, on the south by Sibley Boulevard and on the east by the Illinois/Indiana State line. |
| LaSalle | Oglesby including the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S31; and T33N, R1E, S36. |
| Madison | Granite City Township and Nameoki Township. |
| Indiana: | |
| Lake | Cities of East Chicago, Hammond, Whiting, and Gary. |
| Vermillion | Clinton Township. |
| Maine: | |
| Aroostook | City of Presque Isle. |
| Michigan: | |
| Wayne | The area bounded by Michigan Avenue from its intersection with I-75 west to I-94, I-94 southwest to Greenfield Road, Greenfield Road south to Schaefer Road, Schaefer Road south and east to Jefferson Avenue, Jefferson Avenue south (Biddle Avenue through the city of Wyandotte) to Sibley Avenue, Sibley Avenue west to Fort Street, Fort Street south to King Road, King Road east to Jefferson Avenue, Jefferson Avenue south to Helen Road, Helen Road east extended to Trenton Channel, Trenton Channel north to the Detroit River, the Detroit River north to the Ambassador Bridge, Ambassador Bridge to I-75, I-75 to Michigan Avenue. |
| Minnesota: | |
| Ramsey | The area bounded by the Mississippi River from Lafayette to Route 494, Route 494 east to Route 61, Route 61 north to I-94 I-94 west to Lafayette, and Lafayette south to the Mississippi River. |
| Olmsted | City of Rochester. |
| Missouri: | |
| Audrain | County. |
| Montana: | |
| Flathead | The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN. |
| Lincoln | Columbia Falls: Township T30N, R20W, Sections 7, 8, 9, 16, and 17. |
| Libby | Libby. |
| Lake | Ronan, Polson. |
| Missoula | Township T13N, R19W, sections 2, 8, 11, 14, 15, 16, 17, East 19, 20, 21, 22, 23, 24, 27, 28, 29, East 1/2 30, East 1/2 31, 32, 33, 34, and T12N, R19W, section 4, 5, 6, 7. |
| Rosebud | Lame Deer. |
| Silver Bow | Butte. |
| Nevada: | |
| Washoe | Reno planning area: Hydrographic area 87. |
| Clark | Las Vegas planning area: Hydrographic Area 212. |
| New Mexico: | |
| Dona Ana | The area bounded by Anthony Quadrangle, Anthony, New Mexico—Texas, SE/4 La Mesa 15' Quadrangle, N3200—W10630/7.5, Township 26S, Range 3E, Sections 35 and 36 as limited by the New Mexico—Texas State line on the south. |
| Ohio: | |
| Cuyahoga | County. |
| Jefferson | The portion of the City of Steubenville south of Market Street, plus the area bounded on the north by the southern boundary of the City of Steubenville, on the west by Ohio Route #7, on the south by the southern border of Steubenville Township, and on the east by the Ohio/West Virginia border. |
| Oregon: | |
| Jackson | Medford-Ashland air quality maintenance area (including White City). |
| Josephine | Grants Pass: The area within the urban growth boundary. |
| Eugene/Springfield | Eugene/Springfield: The area within the urban growth boundary. |
| Klamath | Klamath Falls: The area within the urban growth boundary. |
| Union | LaGrande: The area within the urban growth boundary. |

PM-10 INITIAL NONATTAINMENT AREAS ^{1,2}—Continued

| State and counties | Area of Concern |
|--------------------|--|
| Pennsylvania: | |
| Allegheny..... | The area including Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton. |
| Puerto Rico: | |
| Guaynabo..... | Municipality of Guaynabo. |
| Texas: | |
| Lubbock..... | That portion of the City of Lubbock enclosed by Loop 289 highway. |
| El Paso..... | City of El Paso. |
| Utah: | |
| Salt Lake..... | County. |
| Utah..... | County. |
| Washington: | |
| King..... | The portion of the City of Seattle bounded on the east by I-5/East Duwamish Greenbelt, on the south by 104th Street, on the west by the West Duwamish Greenbelt north to Fairmont Avenue, S.W., north on Fairmont to Elliott Bay, and Dearborn Street from Elliott Bay to I-5; |
| | The City of Kent and a portion of the Green River valley bounded on east and west by the 100-foot contour, on the north by South 212th Street, and on the south by Highway 516. |
| Pierce..... | Tacoma metropolitan area bounded on the north by Marine View Drive from Commencement Bay east to the 100-foot contour, southeast along the 100-foot contour to 64th Avenue East, south along 64th Avenue East extended to I-5, I-5 west to the 100-foot contour near Pacific Avenue, and north along the 100-foot contour to Commencement Bay. |
| Spokane..... | The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 489000mE, 5271000mN, west to 458000mE, 5271000mN, thence north along a line to coordinate 458000mE, 5288000mN, thence east to 463000mE, 5288000mN, thence north to 463000mE, 5292000mN, thence east to 481000mE, 5292000mN, thence south to 481000mE, 5288000mN, thence east to 489000mE, 5288000, thence south to the beginning coordinate 489000mE, 5271000mN. |
| Yakima..... | The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN. |
| Thurston..... | Cities of Olympia, Tumwater, and Lacey. |
| Walla Walla..... | Wallula. |
| West Virginia: | |
| Brooke..... | Follansbee area bounded on the north by the Market Street Bridge, on the east by West Virginia Route #2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border. |
| Wyoming: | |
| Sheridan..... | City of Sheridan. |

¹ When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of the date of this notice.

² When a planning area is shown, the area of concern includes the entire planning area unless the area is further defined (e.g., by township, range, and/or section).

IV. Significance of Today's Action

By November 15, 1991, States must adopt and submit to EPA a SIP for all those areas that were classified as moderate PM-10 nonattainment areas by operation of law upon enactment of the 1990 Clean Air Act Amendments [see Subpart 4 of Part D of Title I of the Clean Air Act as amended (section 189)]. All of the areas listed above must submit a SIP meeting the general requirements for nonattainment areas identified in section 172 of the amended Act and the requirements specific to PM-10 in Subpart 4 of Part D. In particular, section 189(a) of the amended Act requires that all of the initial moderate PM-10 nonattainment areas submit a SIP by November 15, 1991 which includes the following:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable.
2. Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM-10 are implemented by December 10, 1993.

In addition, a new source permit program meeting the requirements of

Part D of the Act is required for the construction and operation of new and modified major stationary sources of PM-10 (including, in some cases, PM-10 precursors). A SIP revision meeting this requirement is due by June 30, 1992 for all of the initial moderate PM-10 nonattainment areas. The EPA will provide additional guidance on SIP requirements for these areas in the near future.

Also note that EPA must take final action by the end of 1991 with respect to which of these initial PM-10 nonattainment areas should be reclassified from moderate to serious because they cannot practicably attain the PM-10 air quality standards by December 31, 1994 [see section 188(b)(1) of the amended Act]. If reclassified as serious, these areas will be subject to additional control requirements and a new attainment date. Since EPA must propose these reclassifications by June 30, 1991, EPA will work with the States before that date in order to develop a proposed list of moderate areas to be reclassified as serious.

V. Authority

Sections 107(d)(4), 110, 188(a), and 301 of the amended Clean Air Act provide authority for today's action.

Dated: March 7, 1991.

Michael Shapiro,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-5987 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES
ADMINISTRATION

41 CFR Part 301-1 and Ch. 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance
of Payment From a Non-Federal
Source for Travel Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule; correction.

SUMMARY: This action corrects an error in a document amending the Federal Travel Regulation which was published March 8, 1991 [56 FR 9878]. In the

"DATES" section of the preamble, the applicability date reading "March 8, 1991" is corrected to read "March 6, 1991."

EFFECTIVE DATE: March 6, 1991.

ADDRESSES: Send comments to the General Services Administration, Travel Management Division (FBT), Washington, DC 20406, telefax (703) 557-3094.

FOR FURTHER INFORMATION CONTACT: Leonard Loewentritt or Janet Harney, Office of General Counsel (LP), Washington, DC 20405, telephone FTS 241-1156 or commercial (202) 501-1156.

Note: For additional corrections, see the corrections section of this issue.

Dated: March 12, 1991.

Donna D. Bennett,

Director, Travel Management Division,
[FR Doc. 91-6269 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-20; RM-7124]

Radio Broadcasting Services; Marina, Salinas & Seaside, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224B1 for Channel 224A at Marina, California, and modifies the license of Station KBOQ(FM) to specify operation on the higher powered channel, as requested by Model Associates, Inc. Additionally, in order to accommodate the modification at Marina, Channel 278A is substituted for Channel 280A at Salinas, California, and the license issued to KCTY AM & KRAY FM, Inc. for Station KRAY-FM is modified accordingly. Also, Channel 280A is substituted for Channel 278A at Seaside, California, for which four applications are pending, to accommodate the modification of Station KBOQ(FM). Coordinates for Channel 224B1 at Marina are 36-33-09 and 121-47-17. Coordinates for Channel 278A at Salinas are 36-38-01 and 121-30-23. Coordinates for Channel 280A at Seaside are 36-36-48 and 121-50-12. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 90-20, adopted February 25, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by removing Channel 224A at Marina and adding Channel 224B1; by removing Channel 280A at Salinas and adding Channel 278A; and by removing Channel 278A at Seaside and adding Channel 280A.

Federal Communications Commission.

Andrew J. Rhodes,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6117 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-446; RM-7082]

Radio Broadcasting Services; Key Largo, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C2 for Channel 280A at Key Largo, Florida, and modifies the construction permit of Station WZMQ(FM) to specify operation on the higher class channel, at the request of Spanish Broadcasting Systems of Florida, Inc. See 55 FR 42738, October 23, 1990. Channel 280C2 can be allotted to Key Largo in compliance with the Commission's minimum distance separation requirements, with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community. The coordinates are North Latitude 24-57-20 and West Longitude 80-34-50. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-446, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continue to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 280A and adding Channel 280C2 at Key Largo.

Federal Communications Commission.

Andrew J. Rhodes,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6244 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-614; RM-7136]

Radio Broadcasting Services; Brookston and Monticello, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallocates Channel 237A from Monticello to Brookston, Indiana, and modifies the license of WKJM, Inc. for Station WKJM(FM), as requested, pursuant to the provisions of section 1.420(i) of the Commission's rules. The allotment of Channel 237A to Brookston will provide the community with its first local broadcast service without depriving Monticello of its only local aural service. See 55 FR 1483, January 16, 1990. Coordinates used for Channel 237A at Brookston are 40-40-57 and 86-51-34. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-614, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 237A at Monticello and adding Channel 237A, Brookston.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6245 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-554; RM-7442]

Radio Broadcasting Services; Littlefield, TX.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stebbins Broadcasting Company, substitutes Channel 238C3 for Channel 238A at Littlefield, Texas, and modifies its construction permit for Station KXDM at Littlefield to specify operation on the higher powered channel. See 55 FR 49097, November 26, 1990. Channel 238C3 can be allotted to Littlefield in compliance with the Commission's minimum distance separation requirements at the site by the petitioner, at coordinates North Latitude 33-56-17 and West Longitude

102-20-38. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-554, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 238A and adding Channel 238C3 at Littlefield.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6246 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-386; RM-7276]

Radio Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Palouse Empire Broadcasting Corp., substitutes Channel 258C1 for Channel 258C2 at Pullman, Washington, and modifies its construction permit for Station KZZL-FM at Pullman to specify operation on the higher powered channel. See 55 FR 35325, August 29, 1990. Channel 258C1 can be allotted to Pullman in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.8 kilometers (10.4 miles) east of Pullman to avoid a short-spacing

to Station KKZX(FM), Channel 255C, Spokane, Washington, at coordinates North Latitude 46-40-32 and West Longitude 116-58-06. Since Pullman is located with 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-386, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 258C2 and adding Channel 258C1 at Pullman.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6247 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-06; Notice 2]

RIN 2127-AD05

Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids—Color Coding

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In response to a petition from Bendix France, this notice amends Standard No. 116's color coding requirements to require that a newly developed type of brake fluid, which is of a non-silicone base that meets the characteristics of DOT 5 fluids, be colorless to amber. All brake fluids that have these characteristics and that are manufactured before the effective date of these amendments are required by the standard to be purple. NHTSA has determined that requiring the newly developed DOT 5 non-silicone base brake fluids (non-SBBFs) to be colorless to amber will help distinguish them from traditional silicone base brake fluids (SBBFs), which continue to be required to be purple in color. To further distinguish the new fluids, they will henceforth have to be labeled "DOT 5.1 non-silicone base." In addition, the amendments require DOT 5.1 non-SBBFs to comply with the test procedures for pH value, chemical stability, and compatibility. DOT 5 SBBFs continue to be excluded from these requirements, since silicone base fluids are inherently stable in terms of pH and chemical stability. This notice also amends certain test procedures to ensure the repeatability of test results and deletes extraneous language that is no longer in effect.

DATES: *Effective date:* The rule is effective on September 11, 1991.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 15, 1991.

ADDRESS: Petitions for reconsideration of this rule should refer to Docket 90-06, Notice 2 and be submitted to the following address: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-5277.

SUPPLEMENTARY INFORMATION:*Background*

Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, (49 CFR 571.116) sets forth requirements for the fluids used in hydraulic brake systems of motor vehicles, the containers for these fluids, and the labels for these containers. This standard is intended to reduce failures in the hydraulic braking systems of motor vehicles which may occur

because of the manufacture or use of improper or contaminated fluid.

Section S5.1 specifies three grades of motor vehicle brake fluids (DOT 3, DOT 4, and DOT 5) and sets forth performance requirements for, among other things, the equilibrium reflux boiling point (ERBP), the wet ERBP, and the kinematic viscosities. DOT 5 brake fluids are required to have higher boiling points and superior low temperature kinematic viscosities than DOT 3 and DOT 4 brake fluids. As a result, DOT 5 brake fluids are associated with higher performance levels than the DOT 3 and DOT 4 brake fluids. DOT 5 brake fluids have traditionally been of a silicone base, while DOT 3 and DOT 4 brake fluids have been of a non-silicone base. A silicone base brake fluid (SBBF) is immiscible (i.e., incapable of mixing or attaining homogeneity) with a non-silicone base brake fluid (non-SBBF).

In recent years, manufacturers have developed DOT 5 non-SBBFs which are fully miscible with DOT 3 and DOT 4 fluids, but immiscible with traditional DOT 5 SBBFs. The DOT 5 non-SBBFs may provide a low cost alternative to the traditional high performance DOT 5 SBBFs.

Unlike the non-SBBFs, SBBFs (i.e., these traditional DOT 5 fluids) have corrosion inhibiting properties resulting from their "low moisture avidity," i.e., they do not absorb water. While some consumers purchase the DOT 5 SBBFs for this characteristic, Standard No. 116's performance requirements do not address the corrosion inhibiting characteristics directly related to a brake fluid's field performance.

Section S5.1.14 of Standard No. 116 has for some time required DOT 3 and DOT 4 brake fluid to be colorless to amber, DOT 5 to be purple, and hydraulic system mineral oil to be green. In establishing color code requirements, the agency explained their purpose "is to permit easy identification of fluids before they are placed in the vehicle, in order to prevent the mixing of an incompatible fluid in a braking system" and "to enable users to distinguish among various unused brake fluids, rather than to match fluid in a master cylinder with additional fluid." (41 FR 54942, December 16, 1976).

Petition for Rulemaking

On January 18, 1989, Bendix France, a division of Allied Signal (Bendix), petitioned the agency to amend Standard No. 116's color coding requirements, claiming that the DOT 5 non-SBBFs would provide a cost effective means of improving consumer safety. The petitioner stated that requiring DOT 5 non-SBBFs to be purple

would mislead consumers, since they are immiscible with traditional DOT 5 SBBFs but miscible with traditional DOT 3 and DOT 4 fluids. Accordingly, Bendix requested the agency to require the new DOT 5 non-SBBFs to be colorless to amber to distinguish them from the traditional purple DOT 5 SBBFs. In addition, the petitioner requested the new DOT 5 non-SBBFs be required to comply with certain requirements from which DOT 5 SBBFs are currently excluded (i.e., the pH requirements in S5.1.4, the chemical stability requirements in S5.1.5.2, and the compatibility requirements for stratification in S5.1.10). The DOT 5 fluids have been excluded from pH and chemical stability requirements because DOT 5 SBBFs are inherently stable. Thus, such testing is unnecessary. The petitioner did not request that DOT 5 SBBFs be required to comply with any different performance requirements.

Notice of Proposed Rulemaking (NPRM)

On March 2, 1990, NHTSA proposed amending Standard No. 116 to require DOT 5 non-SBBFs to be colorless to amber, reasoning that such color coding would help consumers distinguish among brake fluids with differing characteristics. (55 FR 7510) In particular, the agency tentatively determined that the newly developed DOT 5 non-SBBFs, with their differing miscibility and corrosion inhibiting properties, should be distinguished from traditional DOT 5 SBBFs. To further distinguish the new fluids, the notice proposed that DOT 5 fluids be labeled either "DOT 5 non-silicone base" or "DOT 5 silicone base," as appropriate. The notice also proposed requiring DOT 5 non-SBBFs to comply with the performance requirements for pH value, chemical stability, and compatibility.

The Agency Response to the Comments

NHTSA received nine comments in response to the NPRM. The agency has considered the points raised in the comments in developing this final rule. The significant points raised by the commenters are addressed below, along with the agency's response to them. For the convenience of the reader, this notice follows the NPRM's order.

A. Color Coding Requirements

At the time that Bendix petitioned the agency, section S5.1.14 required that DOT 3 and DOT 4 fluids be colorless to amber, DOT 5 be purple, and hydraulic system mineral oil be green. These requirements, along with section S5.2.2.1's requirement that the label include the DOT grade, are intended to

assist users in distinguishing among brake fluids. In the interest of promoting the proper use of its newly developed non-SBBF DOT 5 fluid, the petitioner requested the agency use color coding to distinguish further between those fluids and DOT 5 SBBFs. The petitioner recommended the distinction be based on whether the fluid showed stratification during compatibility tests.

The notice proposed that DOT 5 non-SBBFs be colorless to amber and traditional DOT 5 SBBFs remain purple. The agency based its original color coding proposal on existing requirements of independent standardization organizations including the Society of Automotive Engineers (SAE); FAKRA, the German equivalent to the SAE; and the International Standardization Organisation (ISO). The agency's goal was to develop a system for distinguishing among brake fluids that would not be overly complex or misleading.

Chrysler, GM, and Wagner agreed that the DOT 5 non-SBBFs should be colorless to amber, stating that color coding of fluids alerts consumers against mixing incompatible fluids. No commenters addressing this issue opposed the color coding proposal.

Based on the reasons set forth in the NPRM and the agreement of those manufacturers commenting on the issue, the agency has decided to adopt the color coding requirements in S5.1.14, as proposed.

B. DOT Grade Category

As mentioned above, section S5.2.2.1 requires brake fluid labels to include the DOT grade. In response to the petition, NHTSA proposed that labels on DOT 5 fluids would have to indicate whether the fluid is a "silicone base" or "non-silicone base." The agency tentatively concluded that this additional information was necessary to facilitate consumer comprehension about the immiscibility of the Bendix fluid with traditional DOT 5 SBBFs. The proposal discussed other designations, e.g., "high temperature DOT 4" and DOT 6, but rejected these because they had the potential to be confusing and were inconsistent with the actions of the standardization organizations.

Commenters offered differing views about the best way to designate the new non-silicone base DOT 5 brake fluid. Dow favored the labeling designation as proposed, claiming that the other designations would be misleading. Mico and Wagner, manufacturers of brake components, and GM believed that designating both silicone base and non-silicone base fluids as "DOT 5" was not sufficient to prevent misapplications

because some consumers might rely solely on the marking "DOT 5" and would not know the difference between SBBFs and non-SBBFs. These commenters were concerned that manuals instructing consumers to "use DOT 5 fluids" in their vehicles would contribute to the damaging of the braking systems of aftermarket vehicles if those systems were exposed to DOT 5 non-SBBFs. FAKRA recommended that the non-SBBFs be designated DOT 5 "conventional" fluids because of their similarities to DOT 3 and 4 fluids. Stating that further differentiation could be attained without violating the concerns in the NPRM, Chrysler recommended that DOT 5 non-SBBFs be designated "DOT 5.1 non-silicone base brake fluid." Chrysler continued that such a designation would indicate that the new fluid had DOT 5 performance characteristics and yet implied something different.

After reviewing the proposal in light of the comments, the agency has decided to require non-SBBFs with DOT 5 performance characteristics to be labeled "DOT 5.1 non-silicone base" and traditional SBBFs with DOT 5 performance characteristics will be labeled "DOT 5 silicone base." The agency has decided that such labeling requirements are necessary to help further distinguish the newly developed fluid, thus reducing the risk of mixing incompatible fluids. The agency believes that this designation will avoid an overly complex labeling system, be consistent with labeling specifications in other countries (International Harmonization), and adequately alert consumers not to use the new non-SBBF fluid in systems marked "Use with DOT 5 only."

C. Chemical Composition

In proposing requirements distinguishing between SBBFs and non-SBBFs, the agency recognized that Standard No. 116 traditionally has focused broadly on performance rather than chemical composition and has never required the label to state the fluid's composition. However, the NPRM explained that the basis for the proposal is the immiscibility of SBBFs and non-SBBFs, a factor relevant to the standard's test procedure for compatibility.

As for differentiating DOT 5 fluids, the petitioner suggested that it be based on stratification (i.e., the separation into definite layers of different non-homogenous materials in a mixture) when tested according to the standard's compatibility test. The NPRM rejected this method of differentiation because stratification would be difficult to

determine in practice and thus difficult to enforce. The agency tentatively concluded that the best way to differentiate DOT 5 fluids would be through using an existing definition specifying that a fluid is either a SBBF or a non-SBBF. The notice stated that this would enable SBBFs to be differentiated from other DOT 5 fluids, while avoiding potential ambiguities caused by incomplete stratification during testing. The notice thus proposed adopting the definition for silicone base brake fluid in the military specification, "Brake Fluid, Silicone, Automotive, All Weather, Operational and Preservative, Metric," MIL-B-46176A, (29 April 1966, amended 5 August 1988). That provision states that "The material covered by this specification shall contain not less than 70 percent by weight of a diorgano polysiloxane. . . ." The agency did not anticipate that this proposal would pose a significant problem for current users because the principal users of silicone base brake fluid, the military and the Postal Service, currently use this definition.

Union Carbide opposed this distinction stating that it is difficult to justify distinguishing between one fluid containing 69 percent diorgano polysiloxane and one with 71 percent. Wagner was concerned that such a designation would delay future product development because then other rulemakings to amend the DOT 5 category might be required. Union Carbide was also concerned that differences in miscibility properties by fluid composition may limit the selection of other types of raw materials.

In response to Union Carbide's first concern, the agency notes that as with all Federal safety standards issued under the Vehicle Safety Act, Standard No. 116 must use definitions that are clear and objective. As such, there will always be situations at which a line must be drawn. As for delaying future development, the agency disagrees with the commenter's belief that distinguishing between silicone base and non-silicone base fluids will restrict the development of additional fluids, because the two categories—silicone base fluids and non-silicone base fluids (i.e., fluids with any composition other than of a silicone base)—are all inclusive.

D. Test Procedures

Bendix requested that any DOT 5 non-SBBF be required to comply with all performance requirements in Standard No. 116, even requirements from which DOT 5 fluids have previously been excluded. As initially promulgated,

Standard No. 116 excluded the DOT 5 fluids from the pH value requirements in S5.1.4 and the chemical stability requirements in S5.1.5.2. These requirements were deemed unnecessary for DOT 5 fluids which, at the time, were typically SBBFs. The agency agreed with the petitioner and proposed that, except for DOT 5 SBBFs, all fluids, including DOT 5 non-SBBFs, must comply with the requirements for pH value, chemical stability, and compatibility in relation to compatibility. In addition, the notice proposed that to test DOT 5 non-SBBFs more accurately, those fluids should be subject to the procedure evaluating water tolerance in S6.9. The notice also proposed requiring DOT 5 non-SBBFs to be mixed with 3.5 percent water rather than be humidified, and be tested for its pH value. As for the humidification test procedure, the notice proposed increasing the test's duration through the use of larger samples and requiring the test fluid and the TEGME sample to be placed in the same desiccator. The agency tentatively concluded that these modifications would better ensure test result repeatability and thus the standard's enforceability. The notice also proposed deleting outdated provisions, such as references to tests with RM-1 fluid, which were in effect until November 3, 1986.

GM agreed with the proposal that the non-SBBFs with DOT 5 performance characteristics should comply with the pH value, chemical stability, and stratification portion of the compatibility requirements. Wagner believed that both the non-SBBF and SBBF should be tested identically. No commenters opposed this proposal to require full compliance of non-SBBFs.

Based on the discussion in the proposal and the comments about it, the agency has decided to test the new DOT 5.1 non-SBBF, as proposed. However, it disagrees with Wagner's recommendation to subject SBBFs to the pH, chemical stability, and non-stratification requirements of the water tolerance test. Given the inherent stability of SBBFs, such testing would only add extra cost and time to the tests, without producing any corresponding safety benefits.

E. Miscellaneous issues

Several commenters raised other issues in their comments. Wagner was concerned about DOT 5 performance characteristics not currently addressed in Standard No. 116, including vapor lock, lubricity, the effect on rubber, mixed fluid corrosion, and air solubility. Wagner also recommended additional requirements to address fluid compressibility and related brake pedal

travel. Union Carbide suggested that the agency establish two separate safety standards for brake fluids: one for low water tolerant, e.g. silicone base, brake fluids, and one for water tolerant brake fluids. Union Carbide also recommended using different referee materials for the different grade fluids.

The agency notes that the issues addressed in these comments are beyond the scope of the proposal. The agency may consider proposing such amendments in the future if it determines that there is a need for them.

F. Impacts

NHTSA has examined the effect of this rulemaking action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that requiring DOT 5.1 non-SBBFs to be colorless to amber, requiring these distinctions to be indicated on the brake fluid container label, and subjecting DOT 5.1 non-SBBFs to additional testing will not significantly increase the cost of brake fluid or the cost of packaging. In fact, consumer costs may be reduced because this rulemaking may facilitate the introduction into the market of less expensive non-SBBFs of DOT 5 grade.

NHTSA believes that the adoption of this rule will not significantly increase the burdens for any party, even though DOT 5.1 non-SBBFs will be subject to additional tests and labels on DOT 5 fluid will be required to designate the fluid as "DOT 5 silicone base brake fluid" or "DOT 5.1 non-silicone base brake fluid." The agency views these modifications as necessary and easily accomplished for the new type of DOT 5.1 fluids. Because the impacts of this rule are minimal, the agency has not prepared a full regulatory evaluation. The agency anticipates that additional costs due to producing and packaging the fluids will be minimal. The agency also anticipates that additional costs due to testing will be negligible since large batch quantities are produced but only very minute test samples are involved.

NHTSA has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility Act. Based on this consideration, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Any fluid manufacturer qualifying as a small business under the Regulatory Flexibility Act might benefit by the changes in this rule, since they accommodate the development of the

new non-SBBFs. As noted above, the additional labeling and testing costs appear to be minimal. Therefore, NHTSA believes that the amendments will not result in significant cost impacts for any party.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and motor vehicle equipment. However, the agency believes that these entities will not significantly be affected by the amendments in this notice since the change will not significantly affect the price of motor vehicle brake fluids.

NHTSA has also analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Finally, NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR 571.116, *Motor Vehicle Brake Fluids*, is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.116 [Amended]

2. In § 571.116, S4 is amended by adding the following definition *silicone base brake fluid* (SBBF) in alphabetical order to read as follows:

* * * * *

A *silicone base brake fluid* (SBBF) is a brake fluid which consists of not less than 70 percent by weight of a diorgano polysiloxane.

* * * * *

§ 571.116 [Amended]

3. In § 571.116, S5 is revised to read as follows:

S5 *Requirements*: This section specifies performance requirements for DOT 3, DOT 4, and DOT 5 brake fluids; requirements for brake fluid certification; and requirements for container sealing, labeling, and color

coding for brake fluids and hydraulic system mineral oils. Where a range of tolerances is specified, the brake fluid shall meet the requirements at all points within the range.

4. In § 571.116, S5.1.4 is revised to read as follows:

S5.1.4 *pH value.* When brake fluid, except DOT 5 SBBF, is tested according to S6.4, the pH value shall not be less than 7.0 nor more than 11.5.

5. In § 571.116, S5.1.5.2 is revised to read as follows:

S5.1.5.2 *Chemical stability.* When brake fluid, except DOT 5 SBBF, is tested according to S6.5.4, the change in temperature of the refluxing fluid mixture shall not exceed 3.0 °C. (5.4 °F.) plus 0.05° for each degree that the ERBP of the fluid exceeds 225 °C. (437 °F.).

6. In § 571.116, S5.1.6(f) is revised to read as follows:

(f) The pH value of water-wet brake fluid, except DOT 5 SBBF, at the end of the test shall not be less than 7.0 nor more than 11.5;

7. In § 571.116, S5.1.10 is revised to read as follows:

S5.1.10 *Compatibility.*

(a) *At low temperature.* When brake fluid is tested according to S6.10.3(a), the test specimen shall show no sludging, sedimentation, or crystallization. In addition, fluids, except DOT 5 SBBF, shall show no stratification.

(b) *At 60° C. (140° F.).* When brake fluid is tested according to S6.10.3(b)—

(1) Sedimentation shall not exceed 0.05 percent by volume after centrifuging; and

(2) Fluids, except DOT 5 SBBF, shall show no stratification.

8. In § 571.116, S5.1.14 is revised to read as follows:

S5.1.14 *Fluid color.* Brake fluid and hydraulic system mineral oil shall be of the color indicated:

DOT 3, DOT 4, and DOT 5.1 non-SBBF—colorless to amber.

DOT 5 SBBF—purple.

Hydraulic system mineral oil—green.

9. In § 571.116, S5.2.2.1(b) is revised to read as follows:

(b) The grade (DOT 3, DOT 4, DOT 5) of the brake fluid. If DOT 5 grade brake fluid, it shall be further distinguished as "DOT 5 SILICONE BASE" or "DOT 5.1 NON-SILICONE BASE."

10. In § 571.116, S5.2.2.2(e) is revised to read as follows:

(e) Designation of the contents as "DOT—MOTOR VEHICLE BRAKE FLUID" (Fill in DOT 3, DOT 4, DOT 5 SILICONE BASE, or DOT 5.1 NON-SILICONE BASE, as applicable).

11. In § 571.116, S5.2.2.2(g)3 is revised to read as follows:

3. STORE BRAKE FLUID ONLY IN ITS ORIGINAL CONTAINER. KEEP CONTAINER CLEAN AND TIGHTLY CLOSED TO PREVENT ABSORPTION OF MOISTURE.

12. In § 571.116, the sentence following the heading of S6, *Test Procedures*, is deleted.

13. In § 571.116, S6.2.1 is revised to read as follows:

S6.2.1. *Summary of procedure.* A 350 ml. sample of the brake fluid is humidified under controlled conditions; 350 ml. of SAE triethylene glycol monomethyl ether, brake fluid grade, referee material (TEGME) as described in Appendix E of SAE Standard J1703 Nov. 83, "Motor Vehicle Brake Fluid," November 1983, is used to establish the end point for humidification. After humidification, the water content and ERBP of the brake fluid are determined.

14. In § 571.116, S6.2.2 is revised to read as follows:

S6.2.2 *Apparatus for humidification.* (See Figure 3).

Test apparatus shall consist of—

(a) *Glass jars.* Four SAE RM-49 corrosion test jars or equivalent screwtop, straight-sided, round glass jars each having a capacity of about 475 ml. and approximate inner dimensions of 100 mm. in height by 75 mm. in diameter, with matching lids having new, clean inserts providing water-vapor-proof seals;

(b) *Desiccator and cover.* Two bowl-form glass desiccators, 250-mm. inside diameter, having matching tubulated covers fitted with No. 8 rubber stoppers; and

(c) *Desiccator plate.* Two 230-mm. diameter, perforated porcelain desiccator plates, without feet, glazed on one side.

15. Paragraph S6.2.3 is revised to read as follows:

S6.2.3 *Reagents and materials.*

(a) Distilled water, see S7.1.

(b) SAE TEGME referee material.

16. In § 571.116, S6.2.4 is revised to read as follows:

§ 6.2.4 *Preparation of apparatus.*

Lubricate the ground-glass joint of the desiccator. Pour 450±10 ml. of distilled water into each desiccator and insert perforated porcelain desiccator plates. Place the desiccators in an oven with temperature controlled at 50±1 °C. (122±1.8 °F.) throughout the humidification procedure.

17. In § 571.116, S6.2.5 is revised to read as follows:

S6.2.5 *Procedure.*

Pour 350±5 ml. of brake fluid into an open corrosion test jar. Prepare in the same manner a duplicate test fluid sample and two duplicate specimens of the SAE TEGME referee material (350±5 ml. of TEGME in each jar). The water content of the SAE TEGME fluid is adjusted to 0.50±0.05 percent by weight at the start of the test in accordance with S7.2. Place one sample each of the test brake fluid and the prepared TEGME sample into the same desiccator. Repeat for the second sample of test brake fluid and TEGME in a second desiccator. Place the desiccators in the 50 °C. (122 °F.) controlled oven and replace desiccator covers. At intervals, during oven humidification, remove the rubber stoppers in the tops of desiccators. Using a long needled hypodermic syringe, take a sample of not more than 2 ml. from each TEGME sample and determine its water content. Remove no more than 10 ml. of fluid from each SAE TEGME sample during the humidification procedure. When the water content of the SAE fluid reaches 3.70±0.05 percent by weight (average of the duplicates), remove the two test fluid specimens from their desiccators and promptly cap each jar tightly. Allow the sealed jars to cool for 60 to 90 minutes at 23°±5 °C. (73.4°±9 °F.). Measure the water contents of the test fluid specimens in accordance with S7.2 and determine their ERBP's in accordance with S6.1. If the two ERBP's agree within 4 °C. (8 °F.), average them to determine the wet ERBP; otherwise repeat and average the four individual ERBP's as the wet ERBP of the brake fluid.

18. In § 571.116, Figure 3, "Humidification Apparatus" is revised by substituting the term "distilled water" in place of "salt slurry." In addition, it is revised by deleting "45±7 mm."

19. In § 571.116, S6.5.4.1 is revised to read as follows:

S6.5.4.1 *Materials.*

SAE RM-66-03 Compatibility Fluid as described in Appendix A of SAE Standard J1703 Nov83, "Motor Vehicle Brake Fluid," November 1983.

20. In § 571.116, S6.5.4.2 is revised to read as follows:

S6.5.4.2 *Procedure.*

(a) Mix 30±1 ml. of the brake fluid with 30±1 ml. of SAE RM-66-03 Compatibility Fluid in a boiling point flask (S6.1.2(a)). Determine the initial ERBP of the mixture by applying heat to the flask so that the fluid is refluxing in 10±2 minutes at a rate in excess of 1 drop per second, but not more than 5

drops per second. Note the maximum fluid temperature observed during the first minute after the fluid begins refluxing at a rate in excess of 1 drop per second. Over the next 15 ± 1 minutes, adjust and maintain the reflux rate at 1 to 2 drops per second. Maintain this rate for an additional 2 minutes, recording the average value of four temperature readings taken at 30 second intervals as the final ERBP.

(b) Thermometer and barometric corrections are not required.

21. In § 571.116, S6.6.4 is revised by replacing the reference to "DOT 5 fluids" with "DOT 5 SBBF fluids."

22. In § 571.116, S6.6.5 is revised by replacing the first sentence with the following sentence:

S6.6.5 *Procedure.* Rinse the cups in ethanol (isopropanol when testing DOT 5 SBBF fluids) for not more than 30 seconds and wipe dry with a clean lint-free cloth.

23. In § 571.116, S6.6.5 is further revised by replacing the fifth sentence, which begins "When testing DOT 3 and DOT 4 brake fluids. . ." with the following sentence:

* * * * *

When testing brake fluids, except DOT 5 SBBF, mix 760 ml. of brake fluid with 40 ml. of distilled water. When testing DOT 5 SBBF's, humidify 800 ml. of brake fluid in accordance with S6.2, eliminating determination of the ERBP. Using this water-wet mixture, cover each strip assembly to a minimum depth of 10 mm. above the tops of the strips. *

24. In § 571.116, S6.6.5 is further revised to have the second to last and last sentences to read as follows:

* * * * *

Measure the pH value of the corrosion test fluid according to S6.4.6.

Measure the pH value of the test mixture according to S6.4.6.

25. In § 571.116, S6.9.1 is revised to read as follows:

S6.9.1 *Summary of the procedure.*

Brake fluid, except DOT 5 SBBF, is diluted with 3.5 percent water (DOT 5 SBBF is humidified), then stored at minus 40 °C. (minus 40 °F.) for 120 hours. The cold, water-wet fluid is first

examined for clarity, stratification, and sedimentation, then placed in an oven at 60 °C. (140 °F.) for 24 hours. On removal, it is again examined for stratification, and the volume percent of sediment determined by centrifuging.

26. In § 571.116, 6.9.3(a) is revised by adding "SBBF" after "DOT 5" in the first sentence. In the second sentence, the words "DOT 3 and DOT 4" before the words "brake fluids" are deleted and "except DOT 5 SBBF" is added after the words "brake fluids."

27. In § 571.116, S6.10.1 is revised to read as follows:

S6.10.1 *Summary of the procedure.*

Brake fluid is mixed with an equal volume of SAE RM-66-03 Compatibility Fluid, then tested in the same way as for water tolerance (S6.9) except that the bubble flow time is not measured. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperatures.

28. In § 571.116, S6.10.2(e) is revised to read as follows:

SAE RM-66-03 Compatibility Fluid. As described in Appendix A of SAE Standard J1703 Nov83. "Motor Vehicle Brake Fluid." November 1983.

29. In § 571.116, S6.10.2(f) is deleted.

30. In § 571.116, S6.10.3 is revised to read as follows:

S6.10.3 *Procedure.*

(a) *At low temperature.*

Mix 50 ± 0.5 ml. of brake fluid with 50 ± 0.5 ml of SAE RM-66-03 Compatibility Fluid. Pour this mixture into a centrifuge tube and stopper with a clean dry cork. Place tube in the cold chamber maintained at minus 40 ± 2 °C. (minus 40 ± 3.6 °F.) After 24 ± 2 hours, remove tube, quickly wipe with a clean lint-free cloth saturated with ethanol (isopropanol when testing DOT 5 fluids) or acetone. Examine the test specimen for evidence of sludging, sedimentation, or crystallization. Test fluids, except DOT 5 SBBF, shall be examined for stratification.

(b) *At 60 °C. (140 °F.)*

Place tube and test fluid from S6.10.3(a) for 24 ± 2 hours in an oven maintained at 60 ± 2 °C. (140 ± 3.6 °F.). Remove the tube and immediately

examine the contents of the test mixtures, except DOT 5 SBBFs, for evidence of stratification. Determine percent sediment by centrifuging as described in S7.5.

31. In § 571.116, S6.11.1 is revised to read as follows:

S6.11.1 *Summary of procedure.*

Brake fluids, except DOT 5 SBBF, are activated with a mixture of approximately 0.2 percent benzoyl peroxide and 5 percent water. DOT 5 SBBF is humidified in accordance with S6.2 eliminating determination of the ERBP, and then approximately 0.2 percent benzoyl peroxide is added. A corrosion test strip assembly consisting of cast iron and an aluminum strip separated by tinfoil squares at each end is then rested on a piece of SBR WC cup positioned so that the test strip is half immersed in the fluid and oven aged at 70 °C. (158 °F.) for 168 hours. At the end of this period, the metal strips are examined for pitting, etching, and weight loss.

32. In § 571.116, S6.11.4(b) is revised to read as follows:

(b) *Test mixture.*

Place 30 ± 1 ml. of the brake fluid under test in a 22 by 175 mm. test tube. For all fluids except DOT 5 SBBF, add $0.060 \pm .002$ grams of benzoyl peroxide, and 1.50 ± 0.05 ml. of distilled water. For DOT 5 SBBF, use test fluid humidified in accordance with S6.2, and add only the benzoyl peroxide. Stopper the tube loosely with a clean dry cork, shake, and place in an oven for 2 hours at 70 ± 2 °C. (158 ± 3.6 °F.). Shake every 15 minutes to effect solution of the peroxide, but do not wet cork. Remove the tube from the oven and allow to cool to 23 ± 5 °C. (73.4 ± 9 °F.). Begin testing according to paragraph S6.11.5 not later than 24 hours after removal of tube from oven.

33. In § 571.116, S7.2 is revised to delete subparagraph S7.2(b), and S7.2(a) is redesignated S7.2.

Issued on: March 11, 1991.

Jerry Ralph Curry,
Administrator.

[FR Doc. 91-6164 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

FV-91-330

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification ¹

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. The proposed fees would recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

DATES: Comments must be received on or before: April 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709 South Building, Washington, DC 20090-6456. Comments should note the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the office of the Branch Chief during regular business hours.

¹ May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709 South Building, Washington, DC 20090-6456, Telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The proposed rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change December 11, 1989, (54 FR 50731), program operating costs have increased.

The major contributing factors have been two salary increases for Federal employees—a 3.5-percent pay increase effective January 1, 1990, and a 4.1-percent pay increase effective January 1, 1991.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In addition the following increases occurred in program operating expenses: (1) A 13.3-percent increase in the cost of support services during FY-90; (2) a projected inflationary cost increase of 4.0 percent for fiscal year 1991. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a \$1,750,000 loss in fiscal year 1991.

Based on the Agency's analysis of increased costs since 1989, AMS proposes to increase the fees relating to such services. The following table compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42-52.52. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

| Current | Proposed |
|---|---|
| \$31.00 inspector hour, plus \$7.00/hr. overtime. | \$34.50 inspector hour, plus one-half the hourly rate for overtime. |

Charges for copies of inspection documents and/or inspection data in section 52.49:

| Current | Proposed |
|-------------|-------------|
| \$31.00/hr. | \$34.50/hr. |

Charges for travel and other expenses as found in section 52.50:

| Current | Proposed |
|-------------|-------------|
| \$31.00/hr. | \$34.50/hr. |

Charges for year-round in-plant inspection services on a contract basis as found in section 52.51(c):

| Current | Proposed |
|--|--|
| (1) For inspector assigned on a year-round basis: \$25.00/hr. | (1) For inspector assigned on a year-round basis: \$29.00/hr. |
| (2) For inspector assigned on less than a year-round basis: Each inspector: \$28.00/hr. In-plant sampler—\$14.00/hr. | (2) For inspector assigned on less than a year-round basis: Each inspector: \$34.50/hr. In-plant sampler—\$14.00/hr. |
| (5) Overtime: All overtime hours charged at regular rate specified in (c) (1) and (2) plus \$7.00 per hour. | (5) Overtime: All overtime charged at regular rate specified in (c) (1) and (2) plus ½ the hourly rate, per hour. |

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in section 52.51 (d):

| Current | Proposed |
|---|---|
| (1) Each inspector: \$28.00/hr. | (1) Each inspector: \$34.50/hr.* |
| (2) In-plant sampler—\$14.00/hr. | (2) In-plant sampler—\$14.00/hr. |
| (5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus \$7.00 per hour. | (5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus ½ the hourly rate, per hour. |

* Except a minimum of 8 hours per day will be billed for intermittent type in-plant services in lieu of a minimum of 40 hours a week.

List of Subjects in 7 CFR Part 52

Processed Fruits and Vegetables, Food Grades, and Standards.

Accordingly, for the reasons set forth in the preamble, it is proposed that the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.49, 52.50, 52.51), would be amended to read as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1940, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. Section 52.42 would be revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of \$34.50 per hour plus one-half the hourly rate per hour for all scheduled overtime hours. When work is performed on a holiday, an additional

hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.49 would be revised to read as follows:

§ 52.49 Charges for copies of inspection documents and/or inspection data.

If the applicant for inspection service requests additional copies of inspection documents and/or inspection data referable to the processed product covered thereby, the applicant may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.42: Provided, that no charge shall be made for one copy if requested at the time of the original request for inspection. Inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate for each seven (7), or fewer copies in accordance with the rate in § 52.42.

4. Section 52.50 would be revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of \$34.50 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

5. Section 52.51 would be amended by revising paragraphs (c)(1), (c)(2), (c)(5), (d)(1), and (d)(5) to read as follows:

§ 52.51 Charges for inspection service on a contract basis.

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis:

Each inspector—\$29.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—\$34.50 per hour.

In-plant sampler—\$14.00 per hour.

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c) (1) and (2) of this section, plus one-half the hourly rate, per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule.²

(1) Each inspector—\$34.50 per hour.²

(5) Overtime. All overtime hours will be charged at the regular rates specified in (d) (1) and (2) of this section, plus one-half the hourly rate, per hour.

Dated: March 11, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-6163 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-02-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Proposed FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Proposed FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board recently published for comment its proposed regulations implementing the Freedom of Information Act (FOIA) (56 FR 9902, March 8, 1991). Under the proposed regulations the Board would promulgate a schedule of fees for the processing of FOIA requests. This notice sets forth the Board's proposed FOIA fee schedule and solicits comments from interested organizations and individual members of the public.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5:00 p.m. on April 15, 1991.

ADDRESSES: Comments on the proposed fee schedule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for

² Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week.

inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT:

Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: In its proposed FOIA regulations (10 CFR 1703.107(b)(6)) the Board provided that its General Manager would promulgate a schedule of fees for processing FOIA requests and would update the schedule once every 12 months. The FOIA, as amended by the Freedom of Information Reform Act of 1986, Public Law 99-570, title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, provided that the Office of Management and Budget (OMB) would issue guidance to all federal agencies on the establishment of FOIA fees. 5 U.S.C. 552(a)(4)(A)(i). Pursuant to notice and comment, OMB issued in 1987 its Uniform Freedom of Information Act Fee Schedules and Guidelines. 52 FR 10012. Since the FOIA requires that each agency's fees be based upon its direct, reasonable costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. See 5 U.S.C. 552(a)(4)(A)(ii), 552(a)(4)(A)(iv), and OMB's discussion at 52 FR 10015. However, OMB provided guidance on the types of costs that may properly be considered in establishing fees under the FOIA.

The Board's proposed fee schedule is consistent with the OMB guidance. The components of the proposed fees (hourly charges for search or review and charges for copies of requested documents) are based upon the Board's specific costs.

The Proposed Action

Accordingly, the Board proposes to establish the following schedule of fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

| Search or review charge | \$38.00 per hour ¹ |
|----------------------------------|---|
| Copy charge (paper) (8.5" x 11") | \$0.05 per page or generally available commercial rate ² . |
| Copy charge (3.5" diskette) | \$5.00 per diskette. |
| Copy charge (audio cassette) | \$3.00 per cassette. |

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES—Continued

[Implementing 10 CFR 1703.107(b)(6)]

| Search or review charge | \$38.00 per hour ¹ |
|---|-------------------------------|
| Copying large documents (e.g., maps, diagrams). | Actual commercial rates. |

¹ Represents average hourly pay rate for Board employees, plus 22% for employee benefits.

² The Board will have records commercially copied when other Board business does not permit timely copying by Board personnel. The Board does not expect the generally available commercial rate to be higher than \$.05 per page. However, that rate is not within the Board's control and may change during the course of coverage of this fee schedule.

Dated: March 12, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91-6264 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 91-153]

RIN 1550-AA01

Regulatory Capital; Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule, reopening of comment period.

SUMMARY: The Office of Thrift Supervision ("OTS") is hereby reopening the comment period on its proposed rule on interest rate risk until June 1, 1991. See 55 FR 53529 (December 31, 1990). The OTS has determined that additional time should be afforded for the submission of public comment.

DATES: Comments must be received on or before June 1, 1991.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Gerald Hinkle, Capital Markets Analyst, (202) 906-5774; or Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Regulations & Legislation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 31, 1990, the OTS published a notice of proposed rulemaking requesting comment on the interest rate risk component of its regulatory capital requirement. The comment period on the proposal closed on March 1, 1991.

As a result of the hearings that the Office conducted on this proposal, it has become apparent that it would be helpful to institutions in making their comments on the proposed rule to have access to the results of the methodology for measuring interest rate risk exposure for their institutions. The OTS has decided to release to each institution the results that are currently available to help institutions understand both the methodology and the likely effects on the individual institution.

For this reason, and because the proposal itself is lengthy and complex, the OTS has determined that additional time is needed in order to obtain the maximum benefit from the notice and comment process. Therefore, the comment period is reopened until June 1, 1991.

Issues for Further Consideration

In addition to the issues that commenters were asked to address in the original notice, the OTS solicits specific comment on the following questions:

1. A number of commenters have focused on the apparent complexity of the approach for measuring interest rate risk. Are there other approaches available that are simpler and that would adequately address the issue of prepayment risk that is inherent in most mortgage assets?

2. Would commenters be willing to provide detailed data, at the individual account level, that would permit a better analysis of the behavior of retail deposits as interest rate change?

3. Several commenters have expressed concern that the proposed methodology will result in unacceptable volatility in an institution's capital requirement. What alternatives are available that would appropriately measure interest rate risk exposure, but would not exhibit similar volatility?

4. Some commenters have also asserted that the proposal would make capital planning difficult, if not impossible, because an institution's actual capital requirement would not be calculable with certainty until after the end of the reporting period in which it is being measured. What means are available to inject more predictability into the measure without substantially degrading the "accuracy" that results

from basing it on the most recently available interest rates?

Dated: March 11, 1991.

By the Office of Thrift Supervision,
Timothy Ryan,
Director.

[FR Doc. 91-6170 Filed 3-14-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1201

[Docket No. 910235-1036]

RIN 0644-AA01

United States Travel and Tourism Administration Facilitation Fee

AGENCY: Department of Commerce, United States Travel and Tourism Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes detailed regulations governing assessment and collection of the quarterly United States Travel and Tourism Administration (USTTA) Facilitation Fee from commercial airlines and passenger cruise ship lines (hereinafter, carriers). These include:

- (1) The method of determining the amount of fee owed by each carrier for each calendar quarter;
- (2) Acceptable methods and places of payment;
- (3) Procedures for determining whether assessment of a fee with respect to a particular carrier is inconsistent with a specific treaty or international agreement entered into by the United States;
- (4) Procedures for collecting the fee from carriers that fail to pay in a timely manner; and
- (5) Procedures for determining and imposing interest, administrative charges, and civil penalties.

Charging and collecting a USTTA Facilitation Fee is required by section 306 of the International Travel Act of 1961 (the Act), as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508.

The purpose of this notice is to notify the public of, and to solicit comments on, the procedures proposed to implement this requirement.

DATES: Comments must be submitted on or before April 15, 1991.

ADDRESSES: Send comments on the proposal in triplicate to Lee J. Wells,

Director, Office of Strategic Planning and Administration, United States Travel and Tourism Administration, HCHB Room 1524, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Lee J. Wells, Director, Office of Strategic Planning and Administration, United States Travel and Tourism Administration [(202) 377-3811].

SUPPLEMENTARY INFORMATION:

Interested persons are invited to submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate. All communications received on or before the closing date for comments specified above will be considered by the Under Secretary for Travel and Tourism (Under Secretary) before taking action on the proposed regulations. The proposals contained in this notice may be changed in light of the comments. After review of all comments submitted, the Under Secretary will publish in the *Federal Register* the Department of Commerce's final action on the proposed regulations.

Authority to Issue Regulations

Legal authority to issue the regulations is provided by sections 306 and 307 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508.

Background

Section 10301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508), amended the International Travel Act of 1961 (22 U.S.C. § 2121 *et seq.*) (hereinafter, the Act) by requiring the Secretary of Commerce (hereinafter, the Secretary) to charge and collect, on a calendar quarterly basis, a USTTA Facilitation Fee (hereinafter, fee) from each commercial airline and passenger cruise ship line transporting passengers to the United States. Pursuant to section 301(a) of the International Travel Act, authority to impose, collect, and enforce payment of the fee has been delegated to the Under Secretary for Travel and Tourism (hereinafter, the Under Secretary). A final rule imposing the fee was filed by the Under Secretary with the Office of the Federal Register on December 28, 1990, and was published in the *Federal Register* on January 3, 1991, 58 FR 176. The Final Rule, which was effective January 1, 1991, imposed the fee against all carriers transporting passengers to the United States. The fee charged each carrier is directly proportional to the number of aliens as defined under section 101(a)(15)(B) of

the Immigration and Nationality Act (8 U.S.C. § 1101(2)(15)(B)) (hereinafter, aliens) transported into the United States by that carrier. The fee is structured so as to recover each year an amount equal to the appropriate for that year for the activities of the USTTA.

Description of Proposed Regulations

Section 1201.1 provides detailed definitions for terms repeatedly used in the proposed regulations.

Section 1201.2 imposes the quarterly fee effective January 1, 1991. This provision redesignates and amends existing § 1201.1 by simplifying the language and making use of the definitions provided in proposed § 1201.1. It also expands upon the existing language by describing how the fee assessed against each carrier will be determined. As proposed, the quarterly fee for each carrier would be:

(1) The number of aliens as described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(B)) (for business or pleasure) transported to the United States by a carrier in a calendar quarter, multiplied by

(2) The "per alien multiplier" for that year as calculated in accordance with proposed § 1201.3.

Section 1201.3, subsection (a) reiterates the calendar quarterly "per alien multiplier" for calendar year 1991, established for calendar year 1991 by section 306 of the International Travel Act. For 1991, the "per alien multiplier" is one United States dollar.

Subsection (b) describes how the multiplier will be calculated for future calendar quarters. At least annually, the "per alien multiplier" will be revised to ensure that the fees collected at least equal, but do not exceed by more than five percent, the amount of the annual appropriation for the activities of the USTTA for that calendar year. In each calendar year, the initial multiplier for the next calendar year will be calculated after October 1, but before December 31. Section 306(b)(2)(B) requires that the Under Secretary divide the amount appropriated to USTTA "for the fiscal year during which such determination (of what the per alien multiplier for the succeeding calendar year will be) is made" by the amount of aliens expected to arrive in the United States in the next calendar year. If the number of aliens that actually enters the United States is equal to the number expected to enter the United States in a particular calendar year, the aggregate amount of fees collected in a calendar year from all carriers for all aliens will equal the appropriation used to

calculate the multiplier. Thus, the per alien multiplier calculated during the first quarter of fiscal year 1992 is designed to recover an amount of revenue equal to that appropriated for fiscal year 1992 in calendar year 1992.

Subsection (c) describes how the number of aliens expected to arrive in the United States in a calendar year will be estimated. Since the number of aliens who will actually arrive in the United States in the next year cannot be known with precision in advance, calculation of the fee must be based on best predictions. Section 306(b)(2)(A) of the Act specifies that this prediction be based on the number of aliens who entered the United States during the "previous calendar year (as reported or estimated by the Attorney General) and such other information the Secretary deems reliable." This section of the Act does not specify whether the term "previous calendar year" refers to the year previous to the one during which the calculation of the per alien multiplier is made, or to the year previous to the year for which the calculation is made. Either interpretation could fairly be implied. These regulations interpret that the "previous calendar year" means the calendar year before the year during which the calculation is made. This interpretation was chosen because figures from the current year ("previous" to the year for which the calculation is made) will not be available at the time of the calculation (between October 1 and December 31). Although the Act permits the Secretary to use estimated figures from the Attorney General, the preference expressed in these proposed regulations for estimating the next year's arrivals is in favor of using known statistics which are more distant in time over estimated statistics which are more recent in time. The Under Secretary may need to use estimated figures for other purposes, for example, in cases where the Immigration and Naturalization Service (INS) does not conduct INS Form I-94 surveys of incoming passengers. However, where it can be avoided, the Under Secretary chooses not to make one estimate based on another estimate. In addition, section 306(b)(2)(A), which permits use of "such other information as [he] deems reliable" to estimate the next year's arrivals, is interpreted to permit the Under Secretary to take into account any current changes in world circumstances which affect the travel and tourism industry.

Section 306(e) of the Act requires that, after October 1, 1992, the aggregate amount of fees collected from all carriers in a calendar year be at least

equal to, but not in excess of five percent more than, the amount appropriated to the USITA for that fiscal year. For this reason, the proposed regulations allow the "per alien multiplier" to be adjusted on a quarterly basis (see § 1201.3), so that annual total fees collected will meet the limits set forth in section 306(e). In January of each year, and at the beginning of any quarter in which the multiplier may be amended, the Under Secretary will publish the amount of the multiplier along with all estimates used to calculate the multiplier. Section 306(b)(3) of the Act specifies that neither the estimates used to figure the number of aliens transported to the United States in a calendar year, nor the amount of the "per alien multiplier" as calculated in subsection (b) of this proposed regulation, are subject to judicial review.

Section 1201.4 describes how the quarterly bill will be calculated. Because immigration figures will not be normally available until three to four months after the close of the calendar quarter for which they are collected, the quarterly bill will be an estimate based on the number of aliens transported by the carrier during the same calendar quarter from the previous year. The same quarter is used because of the seasonal nature of travel.

Subsections (b) and (c). The INS does not currently maintain statistics in a readily available format for aliens entering the United States on passenger cruise ship lines, and does not collect such statistics from individuals entering the United States from Canada. Such statistics may have to be collected and maintained in a readily available format in the future, or as in the case of Canada, collected from private sources.

Section 1201.5, consistent with the requirements of section 306 of the Act, imposes a due date for all payments of not later than thirty-one days after the close of the calendar quarter for which the bill is submitted. The days on which calendar quarters close are identified. In addition, the section provides procedures for payment of the bills submitted to carriers. The carrier must forward payment together with a remittance copy of the bill to the address specified on the bill. The Secretary of the Treasury, upon receipt of the remittance copy, will forward it to the Under Secretary to enable the Under Secretary to monitor compliance with the Act and these regulations. At the present time, the location of where to make payment is not known. A lockbox arrangement is anticipated.

Section 1201.6 describes how the estimated fee charged will be adjusted after receipt of actual figures regarding the number of aliens transported, in a subsequent calendar quarter. A carrier is required to remit any underpayment at the end of the calendar quarter in which the underpayment is identified. If the carrier has overpaid, the overpayment will be credited against payments due for future quarters. No refunds will be made. If a credit owed to a carrier exceeds the amount of the next quarterly fee, the amount of the credit will be carried over for as many calendar quarters as are needed to exhaust the credit. All such calculations will appear on the quarterly bill furnished to the carrier.

For example:

For calendar quarter 1, USITA obtains figures from INS showing that Carrier A transported 10,000 aliens to the United States during calendar quarter 1 of the previous year. Based on this, USITA submits a bill for \$10,000 (at the \$1 per alien multiplier rate) to Carrier A. Carrier A pays the estimated bill in full not later than 31 days after the end of calendar quarter 1.

For calendar quarter 2, USITA obtains figures from INS showing that Carrier A transported 5,000 aliens to the United States during calendar quarter 2 of the previous year. USITA submits an estimated bill of \$5,000 to the carrier, which is to be paid as described above.

For calendar quarter 3, USITA obtains figures from INS showing that Carrier A transported 7,000 aliens to the United States in calendar quarter 3 of the previous year. At the same time, USITA obtains actual figures from the INS for aliens transported by Carrier A into the United States during calendar quarter 1 of the current year. Such actual figures show that Carrier A actually transported 12,000 aliens into the United States in calendar quarter 1 of the current year, 2,000 more than the previous year upon which the estimate was based. Carrier A thus owes an additional \$2,000 for calendar quarter 1, for which it will be billed. At the end of calendar quarter 3, Carrier A must pay the estimated charge of \$7,000 for calendar quarter 3 and the difference of \$2,000 from calendar quarter 1 of the current year.

For calendar quarter 4, USITA obtains figures from INS showing that Carrier A transported 15,000 aliens into the United States during calendar quarter 4 of the previous year. At the same time, USITA obtains actual figures from INS showing that Carrier A transported only 3,000 aliens into the United States during calendar quarter 2

of the current year, 2,000 fewer than the previous year upon which the estimate was based. In calendar quarter 2, Carrier A's bill was overestimated by \$2,000. Thus, Carrier A owes the \$15,000 estimated fee for calendar quarter 4. The bill for calendar quarter 4 will show a credit adjustment of \$2,000 for the overpayment during calendar quarter 2 of the current year, assuming that the carrier has fully and timely remitted the payment described in the paragraph above.

No interest will be charged a carrier whose estimated bill results in an underpayment of the actual amount owed, if such payment is remitted in a timely manner. If a carrier pays an estimated amount based on the bill submitted by the Under Secretary, within the thirty-one day time frame, and the estimated amount billed and paid results in an underpayment of the actual amount owed, fairness requires that the carrier not be penalized for the Under Secretary's underassessment of the actual amount owed.

Similarly, no interest can be owed or paid to a carrier that has overpaid, as the Under Secretary has no authority to pay interest. Under principles of sovereign immunity, the Government is not liable for interest unless it has consented to be liable for interest either by statute or by contract. The Government has not consented to be liable for interest to carriers under Public Law No. 101-508, section 10301.

Section 1201.7 allows the Under Secretary to adjust the estimated fee on an individual carrier's bill when significant changes in circumstances exist in which use of statistics from the same calendar quarter in previous years likely would result in a substantial overpayment or underpayment of the actual fee. The Secretary may initiate such adjustment upon his or her own initiative, or may do so upon request of a carrier, any trade association, or other organization representing carriers.

Subsection (b). If a carrier, any trade association, or other organization representing carriers requests an adjustment, it must notify the Under Secretary in writing, and provide proof of changes in circumstances, a good faith estimate of what the actual fee is likely to be, and the basis therefor. Such notice must be provided to the Under Secretary not later than the date the payment is due.

Subsection (c). In cases where a carrier believes that payment of the fee based on estimated figures will result in a substantial overpayment of the actual amount, the carrier may withhold that portion of the fee which the carrier believes it would overpay, provided that

it notify the Under Secretary as required in subsection (b). However, the carrier's obligation to make previous payments is not affected by this notice. The Under Secretary, based on such notice, may make adjustments on his or her own initiative in subsequent quarters, and in such case, will notify the carrier. However, in the absence of such notice from the Secretary, a request for adjustment from a carrier for any calendar quarter would not affect the carrier's obligation either to make payments or provide notice under subsection (b) of this proposed regulation in subsequent calendar quarters.

Section 1201.8 restates language in section 306 of the Act to emphasize that the fee is assessed against carriers and not against aliens. Although a carrier may recoup the cost of the fee from higher ticket prices, a carrier may not represent, or take any action likely to result in the appearance, that the fee is imposed on aliens, and is being collected by the carrier from aliens on behalf of the United States Government.

Section 1201.9 provides procedures for collection actions and imposition of civil penalties, administrative charges, and interest from carriers that do not pay all amounts owed, including the estimated fee owed, and any additional amounts owed results from the carrier's underpayment of the actual fee in a previous quarter, in a timely manner. Procedure for administrative offset as a means of collecting amounts owed are found at 4 CFR 102.3 and 15 CFR part 21. Procedures for revoking and suspending licenses, certifications and privileges of carriers that repeatedly or inexcusably fail to pay are found at 4 CFR 102.9.

Section 1201.10 provides procedures for determining civil penalties to be assessed against carriers that fail to pay the fee and all other amounts owed in a timely manner. The Act places a ceiling of \$5,000 per day on the civil penalty. Under section 307(a) of the Act, the Secretary or Under Secretary has statutory authority to mitigate the penalty in whole or in part. Under the Act, each day a payment is not made, or is made late is a separate violation of the statutory obligation to pay. The proposed regulations also interpret that each quarterly payment not made or made late, is a separate violation of the statute.

Section 1201.11. The rate of interest charged for any amounts due is that required for outstanding debts owed to the United States under 31 U.S.C 3717, and published in the *Federal Register* by the Department of the Treasury. The rate may be revised during the calendar year. If so, the revised rate will be

applied to the outstanding amount due in periods during which the revised rate applies. Once a carrier is delinquent in paying a bill, interest accrues as of the date that notice of the amount due (a bill) is mailed to the carrier. (The bill is expected to be mailed to each carrier as near as possible to the first day after the end of a calendar quarter upon which the bill is based.) However, subsection (d) of section 3717 provides that interest may not be charged if the outstanding amount due is paid within thirty days after the date on which notice of the amount due was mailed. In addition, the head of the agency may extend the thirty-day period. For the purpose of these regulations, the Secretary will extend the thirty day period to thirty two days, to accommodate the thirty-one day payment period in section 306 of the Act. Thus, interest will effectively accrue as of the first day after a payment is due. See 31 U.S.C. 3717(d). Interest will not be assessed against panalties. See 31 U.S.C. 3717(f).

Section 1201.12 provides procedures for maintenance of civil actions against carriers that fail or refuse to pay the principal amount due, plus civil penalties and interest. The statute also confers discretion upon the Under Secretary to modify or compromise the assessed civil penalty which is either subject to imposition or has been imposed. This modification is distinguished from the Under Secretary's ability to mitigate the amount of the assessed penalty under proposed 1201.10(b) of these regulations.

Section 1201.13 provides procedures for determining whether assessment and collection of the fee is inconsistent with a treaty or international agreement entered into by the United States. Under the proposed regulation, the Under Secretary would continue to collect the fee until collection has been determined to be inconsistent.

Subsection (a) allows any affected carrier, any trade association or other organization representing such carriers, and any official representing a party to treaty or international agreement entered into by the United States which believes that the collection of the fee would be inconsistent with that treaty or international agreement to bring such treaty or international agreement to the Under Secretary's attention.

Subsection (b) sets forth procedures by which a carrier may withhold payment of a fee based on an alleged inconsistency with a treaty or international agreement.

Subsection (c) provides for the Under Secretary's determination whether collection of the fee from a particular

carrier or carriers would be inconsistent with a treaty or international agreement entered into by the United States. The Under Secretary's determination constitutes final agency action.

Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department of Commerce must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared.

The Under Secretary for Travel and Tourism has determined that the regulations proposed in this notice are not major because they are not likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed regulations, if adopted as proposed, will not have a substantial economic impact on a substantial number of small entities because most of the carriers upon which the fee is imposed are not small entities within the meaning of the Regulatory Flexibility Act. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

Paperwork Reduction Act

These proposed regulations do not contain any collection of information requirements subjects to the requirements of the Paperwork Reduction Act (Pub. L. No. 96-511).

Executive Order 12612

These proposed regulations do not contain policies with federalism implications sufficient to warrant

preparation of a federalism assessment under Executive Order 12612.

Executive Order 12630

These proposed regulations do not have takings implications within the meaning of Executive Order 12630 because they would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 1201

Administrative practice and procedure, Air carriers, Passenger vessels, Travel.

Dated: February 19, 1991.

Wylie H. Whisonant, Jr.,

Acting Under Secretary for Travel and Tourism.

For the reasons set out in the preamble, 15 CFR part 1201 is proposed to be revised to read as follows:

PART 1201—UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE

Sec.

1201.1 Definitions.

1201.2 United States Travel and Tourism Administration Facilitation Fee.

1201.3 Calculation of the "per alien multiplier."

1201.4 Quarterly billing based on estimated fees.

1201.5 Payment of the quarterly bill.

1201.6 Adjustment of the quarterly bill to reflect actual rather than estimated fees.

1201.7 Adjustment of estimated fees for significantly changed circumstances.

1201.8 Prohibition on collecting the fee from aliens on behalf of the United States Government.

1201.9 Collection actions and imposition on civil penalties, administrative charges, and interest.

1201.10 Civil penalties for non-payment or later payment.

1201.11 Interest on principal amount not paid.

1201.12 Civil actions.

1201.13 Determination of whether collection of a fee is inconsistent with a treaty or international agreement signed by the United States.

Authority: 22 U.S.C. 2126 and 2129.

§ 1201.1 Definitions.

For the purpose of this part.

(a) *Aliens* means individuals described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(B)).

(b) *Calendar year* means the period January 1 through December 31 of a particular year.

(c) *Carriers* means commercial airlines or passenger cruise ship lines transporting passengers to the United States.

(d) *Department* means the United States Department of Commerce.

(e) *Fee* means the United States Travel and Tourism Administration Facilitation Fee.

(f) *Fiscal year* means the period October 1 of a particular year through the following September 30.

(g) *Secretary* means the Secretary of Commerce, or designee.

(h) *Under Secretary* means the Secretary for Travel and Tourism.

(i) *United States* means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(j) *USTTA* means the United States Travel and Tourism Administration.

§ 1201.2 United States Travel and Tourism Administration facilitation fee.

As of January 1, 1991, each carrier transporting passengers to the United States from a place outside thereof is hereby assessed a quarterly USTTA Facilitation Fee. This fee is the amount equal to the number of aliens arriving at any port within the United States aboard a commercial aircraft or cruise ship of such carrier during that calendar quarter, multiplied by the "per alien multiplier," as determined by the Under Secretary for that quarter in accordance with § 1201.3.

§ 1201.3 Calculation of the "per alien multiplier."

(a) *Calendar year 1991.* In calendar year 1991 the "per alien multiplier" for each calendar quarter is one United States dollar.

(b) *Subsequent calendar years.* For calendar year 1992 and in subsequent years, the Under Secretary will calculate per alien multipliers by dividing the amount appropriated by Congress for the activities of the USTTA for the fiscal year commencing the previous October 1, by the number of aliens expected to enter the United States aboard carriers (from which collection of this fee has not been determined to be inconsistent with a treaty or international agreement signed by the United States) during the next calendar year, and by rounding the resulting quotient up to the nearest quarter dollar. The Under Secretary will calculate this multiplier after October 1 but before December 31, of the year preceding the calendar year for which the multiplier is being calculated, and will publish the multiplier in the *Federal*

Register. The Under Secretary may adjust the "per alien multiplier" on a quarterly basis so that, after October 1, 1992, the aggregate amount of fees collected from all carriers in a calendar year will be at least equal to, but not in excess of five percent more than, the amount appropriated to the USTTA for that fiscal year. In January of each year, and at the beginning of any quarter in which a multiplier is adjusted, the Under Secretary will publish the amount of the multiplier along with all estimates used to calculate the multiplier.

(c) *Estimation of the number of aliens expected to arrive in the United States in a calendar year.* The Under Secretary, in consultation with the Attorney General and the Secretary of State, will estimate the number of aliens expected to enter the United States aboard carriers during the next calendar year based upon the number of aliens that entered the United States aboard carriers during the previous calendar year, as reported or estimated by the Attorney General, and such other available information as the Under Secretary deems reliable including data for the current calendar year.

§ 1201.4 Quarterly billing based on estimated fees.

(a) *In general.* Before the end of each quarter, the Under Secretary will estimate the fee for each carrier for that quarter, and will send each carrier a bill for the estimated fee for that quarter. The estimated fee will be calculated by multiplying the appropriate "per alien multiplier" for that quarter by the number of aliens arriving in the United States aboard individual aircrafts or passenger cruise ships of that carrier during the same quarter in the preceding calendar year, based on INS reported alien arrivals for that carrier for that quarter from INS Form I-94 surveys.

(b) *Passenger cruise ship lines.* The Under Secretary will use the best available statistics and extrapolations to determine the number of aliens entering the United States aboard passenger cruise ships.

(c) *Aliens from Canada.* The Under Secretary will use the best available statistics and extrapolations to determine the number of aliens entering the United States from Canada during that quarter.

(d) *Where no statistics are available.* If the Under Secretary should fail to send a bill to a carrier because of a lack of statistics on which to base a bill, such failure to send a bill does not imply waiver of the right to collect the fee for

that quarter, when statistics become available.

§ 1201.5 Payment of the quarterly bill.

(a) *Payment due date.* Payment of the quarterly bill must be made no later than thirty-one days after the close of that calendar quarter. Calendar quarters end on the last day of March, June, September, and December. A payment is considered made on the date on which the payment is received at the place of payment set forth in paragraph (b) of this section.

(b) *Fee remittance and information submission procedures.* All fee remittances required to be remitted pursuant to this section shall be paid in full, by check, money order or electronic funds transfer, in United States dollars, drawn on a United States Bank, payable to the United States Treasury. All fee remittances shall be mailed to the address indicated on the bill sent to the carrier. Each payment shall be accompanied by the completed remittance copy of the bill submitted to the carrier by the Under Secretary.

§ 1201.6 Adjustment of the quarterly bill to reflect actual rather than estimated fees.

(a) *Adjustment.* When actual arrival figures become available for a previously billed and paid quarter which was based on an estimated fee, the Under Secretary will calculate the actual fee for that quarter. When the estimated fee paid for any calendar quarter is greater than the actual fee imposed, the carrier will be credited for the overpayment. When the estimated fee paid for the calendar quarter is less than the actual fee imposed, the carrier will be charged for the underpayment. The actual fee imposed and any credits or charges will appear on the next scheduled quarterly bill. Credits to carriers in excess of the quarterly bill will carry over to the subsequent quarter.

(b) *Interest for difference between estimated and actual fees.* Carriers will not be charged interest for the difference between the estimated and the actual fee, if the actual fee is greater than the estimated fee, and is timely paid. Carriers will not be paid interest if the actual fee charged is less than the estimated fee charged and timely paid. In such cases, carriers will be credited for overpayment.

§ 1201.7 Adjustment of estimated fees for significantly changed circumstances.

(a) *Adjustment of an estimated fee.* The Under Secretary, upon his or her own initiative or upon the request of a

carrier, any trade association, or other organization representing carriers, may adjust an estimated quarterly fee if changes in circumstances exist whereby use of INS statistics from the same calendar quarter of the previous year in calculating an estimated fee for the same quarter of the current year likely would result in a substantial overpayment or underpayment of the actual fee.

(b) *Submission of evidence.* If a carrier, any trade association, or other organization representing carriers requests an adjustment, it must notify the Under Secretary in writing of the significant change in circumstances and submit specific evidence thereof as well its best estimation, and the basis therefor, of the number of aliens that arrived in the United States aboard individual aircrafts or passenger cruise ships of the affected carrier during the quarter for which the adjustment is sought.

(c) *Withholding payment pending determination.* A carrier may withhold payment of the portion of the fee estimated by the Under Secretary for a particular calendar quarter believed by the carrier to be in excess of what will be the actual fee if it notifies the Under Secretary in accordance with paragraph (b) of that calendar quarter. Such notification, and any subsequent determination by the Under Secretary, shall not affect payments previously made nor relieve the carrier of its obligation to make other payments due in calendar quarters not subject to the notification.

(d) *Notification of adjustment.* The Under Secretary shall give notice of any fee adjustment, or refusal to adjust a fee, in writing to a requestor and any affected carrier. The notice shall include the basis for the Under Secretary's decision.

§ 1201.8 Prohibition on collecting the fee from aliens on behalf of the United States Government.

Nothing in this part shall be construed as placing any limitation on the amount a carrier may charge passengers it transports to the United States or as prohibiting payment of the fee from ticket revenues. However, since the fee is imposed by statute against carriers based on the number of aliens they carry, and not against aliens themselves, carriers are prohibited from representing on a ticket of passage or elsewhere that they are collecting the fee from an alien on behalf of the United States Government.

§ 1201.9 Collection actions and imposition of civil penalties, administrative charges, and interest.

(a) *Failure to pay fee, notice and opportunity for hearing.* If a carrier fails to pay any fee amount by the date due, the Under Secretary will provide the carrier notice and an opportunity for a hearing.

(b) *Subpoena powers for hearing.* For the purpose of conducting any such hearing, the Under Secretary may issue subpoenas for the attendance and testimony of witnesses, and the production of relevant papers, books and documents, and may administer oaths.

(1) Witnesses summoned to a hearing will be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(2) When an individual is in contempt of or refuses to obey a subpoena served under this section, the United States District Court for any jurisdiction where that individual is found, resides, or transacts business, shall have jurisdiction to issue an order requiring that individual to appear and give testimony before the Under Secretary, or to produce papers, books, or documents before the Under Secretary, or both. If such individual fails to obey the order of the court, he or she may be punished as contempt thereof.

(c) *Order to pay, civil penalties, administrative charges, and interest.* If, after such notice and opportunity for hearing, the Under Secretary finds that a carrier has failed to pay the fee amount outstanding, he or she may order payment of the amount outstanding plus interest on any late payment, in addition to a civil penalty and administrative charges incurred in processing and handling all unpaid amounts.

(d) *Separate violations.* Each payment that is not made, or is made late, and each day that a payment is not made, or is made late, constitutes a separate violation of these regulations.

(e) *Allocation of partial payments to penalties, administrative charges, interest, and the principal amount due.* In the case of partial late payment, the payment received will first be applied to penalties, then to administrative charges incurred, then to the interest charged on the delinquent principal amount, then to the principal amount due.

(f) *Administrative offset.* The Under Secretary may use administrative offset as a means of collecting amounts owed.

(g) *Suspension or revocation of licenses, certifications, or other privileges.* If any carrier repeatedly or inexcusably fails to pay the fee owed, including any civil penalties,

administrative charges and interest, then the Under Secretary may request the Department of Transportation and/or the Department of Justice to suspend or revoke licenses, certification, or other privileges granted by the Government to the carrier.

§ 1201.10 Civil penalties for non-payment or late payment.

(a) *Assessment of amount of penalty.* The Under Secretary shall assess the amount of civil penalty, not to exceed \$5,000 per day, per payment, for each day a payment is not made or is made late.

(b) *Factors.* The Under Secretary, in determining the amount of the civil penalty assessed, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

§ 1201.11 Interest on principal amount not paid.

(a) *Rate of interest.* The rate of interest charged on late payments will be the Current Value of Funds Rate established by the Department of the Treasury under 31 U.S.C. 3717, and published in the *Federal Register*. Interest applied to an overdue payment will be adjusted as necessary to reflect any change in the annual rate of interest.

(b) *Date of charge.* Interest on an unpaid amount will accrue from the date on which notification of the amount due (a bill) is first mailed to the carrier. However, interest will not be assessed until thirty-two days after such date.

(c) *Period for assessment of interest.* Interest on overdue bills will be assessed on the delinquent principal by thirty-day periods.

§ 1201.12 Civil actions.

(a) *Civil action.* If any carrier fails or refuses to pay the principal amount due, plus civil penalties, administrative charges and interest, as ordered, the Under Secretary may request the Attorney General to bring civil action in an appropriate United States District Court to recover the amount the Under Secretary ordered to be paid.

(b) *Mitigation.* Before requesting the Attorney General to bring a civil action, the Under Secretary may compromise, modify, or remit, with or without conditions, any civil penalty (but not the overdue principal amount or any interest) which is subject to imposition or has been imposed under regulations.

§ 1201.13 Determination of whether collection of a fee is inconsistent with a treaty or international agreement signed by the United States.

The Under Secretary will not charge or collect any fee where such charge or collection is inconsistent with treaties or international agreements entered into by the United States. In determining whether collection of the fee from a particular carrier is inconsistent with such a treaty or international agreement, the Under Secretary will consult with the Department of State, the Department of Transportation, and other Federal agencies as appropriate.

(a) *Notification to the Under Secretary.* Any affected carrier, any trade association or other organization representing such carriers, any official representing a party to a treaty or international agreement entered into the United States which believes that the collection of the fee would be inconsistent with that treaty or international agreement should notify the Under Secretary. The notification must include a copy of the applicable treaty or international agreement, specify the relevant provision, and explain why it would be inconsistent for the Under Secretary to charge or collect the fee.

(b) *Withholding payments pending determination by the Under Secretary.* A carrier may withhold payment of the fee for any calendar quarter, pending a determination by the Under Secretary as to whether assessment and collection of the fee is inconsistent with a treaty or international agreement entered into by the United States provided it notifies the Under Secretary in accordance with paragraph (a) of this section no later than thirty-one days after the close of that calendar quarter.

(c) *Determination by the Under Secretary.* After receiving notification in accordance with paragraph (a) of this section, the Under Secretary will determine whether collection of the fee would be inconsistent with the treaty or international agreement in question. The Under Secretary will notify the party giving notice in accordance with paragraph (a) of this section and give an explanation of the reasons for the determination in writing. The Under Secretary will decide the scope of the determination. The Under Secretary's determination constitutes final agency action.

[FR Doc. 91-5954 Filed 3-14-91; 8 45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

RIN 1515-AA67

Liability of Common Carriers for Failure to Exercise the Highest Degree of Care and Diligence to Prevent the Carriage of Unmanifested Controlled Substances

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments concerning the regulations Customs proposed relating to the highest degree of care and diligence standard for carriers. Customs has received several requests to extend the comment period to allow time to prepare responsive comments. The comment period is extended 30 days.

DATES: Comments are requested on or before April 15, 1991.

ADDRESSES: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Penalties Branch (202) 566-8317.

SUPPLEMENTARY INFORMATION:**Background**

A document was published in the *Federal Register* (56 FR 5665) on February 12, 1991, proposing to amend the Customs Regulations by setting forth criteria that common carriers, if they wish to avoid liability when controlled substances are found aboard a conveyance, may use in determining whether they are taking all possible steps to comply with the statutory highest degree of care and diligence standard. Carriers are required by statute to exercise the highest degree of care and diligence to prevent the carriage of unmanifested controlled substances. The proposal solicited comments that were to be received on or before March 14, 1991. Customs has received several requests to extend the period of time for comments. The requesters state additional time is required to prepare responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: March 8, 1991.

John B. O'Loughlin,
Acting Assistant Commissioner, Office of
Commercial Operations.

[FR Doc. 91-6137 Filed 3-14-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[IA-14-91]

RIN 1545-AP58

Adjusted Current Earnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the alternative minimum tax for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989 and the Revenue Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991. These regulations are proposed to be effective for taxable years beginning after December 31, 1989.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attention CC:CORP:T:R (IA-14-91), Room 4429.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 566-4104 (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Internal Revenue Service, Attention IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.56(g)-1(r). This information is required by the Internal Revenue Service to ensure the proper application of § 1.56(g)-1(r). The information will be used to verify that taxpayers have properly elected the benefits of § 1.56(g)-1(r). The likely recordkeepers are businesses and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending upon their particular circumstances.

Estimated total annual reporting burden: 1000 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 1000.

Estimated annual frequency of responses: once only.

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986. The proposed amendments would conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106), and section 11301 and 11531 of the Revenue Reconciliation Act of 1990 (Pub. L. 101-508).

On May 3, 1990, the *Federal Register* published a Notice of Proposed Rulemaking (55 FR 18626) regarding the computation of adjusted current earnings (ACE). A number of public comments were received and a public hearing was held on October 16, 1990. The amendments to the regulations contained in this document are proposed after consideration of the written comments and those presented at the hearing regarding the LIFO adjustment and the computation of adjusted current earnings of foreign corporations. This document also contains proposed regulations regarding the alternative tax energy preference deduction (section 56 (h)) that was added to the Code by the Revenue Reconciliation Act of 1990.

I. LIFO adjustment

Section 56 (g) (4) (D) (iii) and § 1.56(g)-1(f)(3) of the proposed regulations published on May 3, 1990,

state that the adjustment of section 312(n)(4) apply in computing ACE. Commenters were concerned that this did not provide taxpayers with the guidance necessary to make these adjustments in computing their ACE. Therefore, these proposed regulations provide detailed guidance on the application of the section 312(n)(4) adjustment to ACE. Congress enacted section 312(n)(4) as part of the Deficit Reduction Act of 1984, Pub. L. 98-369, to ensure that earnings and profits more closely reflect economic income. Section 312(n)(4)(A) generally requires taxpayers to increase or decrease their earnings and profits by the amount of the increase or decrease in their LIFO reserve during the taxable year.

In accordance with section 312(n)(4), § 1.56(g)-1(f)(3) of the proposed regulations requires taxpayers to adjust ACE based upon the changes in their LIFO reserve. Taxpayers must use the same method of valuing their inventories for ACE as they use in computing their taxable income and pre-adjustment alternative minimum taxable income (pre-adjustment AMTI). Taxpayers who use LIFO in computing taxable income therefore must use LIFO in computing their ACE. As required by § 1.56(g)-1(a)(5), taxpayer must also compute their inventories for ACE purposes by taking into account ACE adjustments. For example, taxpayers must capitalize their ACE depreciation under section 263A in computing inventories for ACE purposes. Thus, the increase or decrease in the LIFO reserve for purposes of the adjustment described in § 1.56(g)-1(f)(3), and the resulting increase or decrease in ACE, is based on inventory amounts that are computed using ACE adjustments (the ACE LIFO reserve).

The proposed regulations generally provided under § 1.56(g)-1(f)(3)(i) that ACE is increased or decreased by the increase or decrease in the ACE LIFO reserve during the taxable year. However, there is no decrease in ACE to the extent the ACE LIFO reserve decreases below the ACE LIFO reserve amount on the last day of the last taxable year beginning before January 1, 1990 (e.g., December 31, 1989 for calendar year taxpayers). The proposed regulations also provide that ACE is increased by increases in the ACE LIFO reserve only to the extent of increases above the ACE LIFO reserve amount on the last day of the last taxable year beginning before January 1, 1990.

Section § 1.56(g)-1(f)(3)(iii) of the proposed regulations provides that the taxpayer's ACE LIFO reserves is the excess of (1) FIFO inventory, computed

in accordance with the methods used in computing taxable income and pre-adjustment AMTI, and with the adjustments described in sections 56 and 58 and the preferences described in section 57, over (2) LIFO inventory, computed in accordance with the methods used in computing taxable income and pre-adjustment AMTI, and with the adjustments described in sections 56 and 58 and the preferences described in section 57. Thus, taxpayers must determine an "ACE FIFO" and "ACE LIFO" inventory amount for purposes of measuring increases and decreases in the ACE LIFO reserve.

The Internal Revenue Service requests comments on this and related issues.

II. Special Election for LIFO Taxpayers

In order to provide taxpayers with a simpler alternative in the computation of pre-adjustment AMTI and ACE, the Service proposes an elective, simplified method of computing LIFO inventories for all tax purposes. Section 1.56(g)-1(r) of the proposed regulations provides that taxpayers may elect to use their regular tax inventory amounts in computing pre-adjustment AMTI and ACE, including the LIFO inventory adjustment of § 1.56(g)-1(f)(3). This election eliminates the need to compute a separate inventory amount for purposes of calculating pre-adjustment AMTI (including an additional application of section 263A with the adjustments and preferences required in computing pre-adjustment AMTI). This election also eliminates the need to compute a separate inventory amount for purposes of calculating ACE (including an additional application of section 263A with the adjustments required in computing ACE). Thus, in computing pre-adjustment AMTI and ACE, taxpayers making the election will use the cost of goods sold that was used in computing taxable income.

Taxpayers making the election must, however, compute each item of adjustment under sections 56 and 58 and each item of tax preference under section 57 without reduction for the portion of the adjustment and preference that, but for the election described in this paragraph, would have been capitalized in ending inventory. This frees taxpayers from calculating the amount of adjustments or preferences that would be capitalized in ending inventory, but it can result in higher total preferences or adjustments in some circumstances. For example, in any year in which LIFO inventory increases and regular tax depreciation exceeds pre-adjustment AMTI and ACE depreciation, this election will further increase pre-adjustment AMTI and ACE

to the extent adjustments or preferences would have been capitalized in ending inventory.

Taxpayers making the election must also compute the LIFO inventory adjustment described in § 1.56(g)-1(g)(3) on the basis of regular tax amounts.

The Service requests comments on the practicality of this election and suggestions of other similar elections that might simplify the alternative minimum tax (AMT) or ACE.

III. ACE of Foreign Corporations

The proposed regulations published on May 3, 1990, did not address the effect of ACE on foreign corporations and United States branches of foreign corporations. Several commenters made suggestions on this issue, and these regulations now propose rules for this area.

Pursuant to section 882(a)(1), foreign corporations are subject to AMT only on income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States. Accordingly, § 1.56(g)-1(m) of the proposed regulations provides that foreign corporations are subject to ACE only with respect to items that are effectively connected (or treated as effectively connected) with the conduct of a United States trade or business. Income that is exempt from United States income tax under section 883 or an applicable income tax treaty, however, is also exempt from AMT, including ACE.

IV. Alternative Tax Energy Preference Deduction

Section 56(h)(8) provides that the Secretary may by regulation provide for appropriate adjustments in computing AMTI or ACE for any taxable year following a year for which a deduction was allowed under section 56(h) (alternative tax energy preference deduction) to ensure that no double benefit is allowed by reason of that deduction. In order to prevent such a double benefit, the proposed regulations provide that when a taxpayer claims an alternative tax energy preference deduction, the taxpayer must reduce basis for ACE purposes by the portion of the alternative tax energy preference deduction that is attributable to adjustments under section 56(g)(4). Thus, for example, where a portion of a taxpayer's alternative tax energy preference deduction is attributable to the depletion adjustment under section 56(g)(4)(F), the taxpayer must reduce basis for purposes of computing depletion under section 56(g)(4)(F) in subsequent taxable years. The proposed

regulations do not provide guidance on the portion of an alternative tax energy preference deduction that is attributable to the adjustments under section 56(g)(4). The Service requests comments on the proper method for determining the portion of an alternative tax energy preference deduction that is attributable to the adjustments under section 56(g)(4)(D)(i) and 56(g)(4)(F).

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and 8 copies) to the Internal Revenue Service. A public hearing will be held on written request to the Internal Revenue Service by any person who submits written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Personnel from other offices of the Service and the Treasury, however, assisted in developing these proposed regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.01-1-1.58-8

Credits, Income taxes, Tax liability, Tax rates.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)-1 is also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239, 103 Stat. 2373).

Par. 2. In § 1.56(g)-0, the entries for paragraphs (a)(7), (r) and (s) are added, and the entries for paragraphs (f)(3) and (m) are revised to read as follows:

§ 1.56(g)-0 Table of Contents.

- (a) Adjustment for adjusted current earnings. * * *
- (7) Application to foreign corporations. * * *
- (f) Certain other earnings and profits adjustments. * * *
- (3) LIFO inventory adjustment.
 - (i) In general.
 - (ii) Beginning LIFO and FIFO inventory.
 - (iii) Definitions.
 - (A) LIFO recapture amount.
 - (B) FIFO method.
 - (C) LIFO method.
 - (D) Inventory amounts.
 - (E) Baseline LIFO recapture amount.
 - (iv) Example. * * *
- (m) Adjusted current earnings of a foreign corporation.
 - (1) In general.
 - (2) Definitions.
 - (i) Effectively connected pre-adjustment alternative minimum taxable income.
 - (ii) Effectively connected adjusted current earnings.
 - (3) Rules for determining effectively connected pre-adjustment alternative minimum taxable income and effectively connected adjusted current earnings.
 - (4) Certain exempt amounts. * * *
- (r) Election to use regular tax inventories for alternative minimum tax purposes.
 - (1) In general.
 - (2) Effect of election.
 - (i) Inventories.
 - (ii) Modifications required.
 - (A) In general.
 - (B) Negative modifications allowed.
 - (iii) LIFO recapture adjustment.
 - (3) Time and manner of making election.
 - (i) Prospective election.
 - (ii) Retroactive election.
 - (iii) Election as method of accounting.
 - (s) Adjustment for alternative tax energy preference deduction.
 - (1) In general.
 - (2) Example.

Par. 3. Section 1.56(g)-1 is amended as follows: Paragraph (a) (7) of the text of paragraph (f) (3), the text of paragraph (m), and paragraphs (r) and (s) are added to read as follows:

§ 1.56(g)-1 Adjusted current earnings.

- (a) Adjustment for adjusted current earnings. * * *
- (7) Application to foreign corporations. See paragraph (m) of this

section for rules relating to the application of this section to foreign corporations.

(f) Certain other earnings and profits adjustments * * *

(3) LIFO inventory adjustment—(i) In general. Adjusted current earnings are generally increased or decreased by the increase or decrease in the LIFO recapture amount (as defined in paragraph (f)(3)(iii) (A) of this section) as of the close of each taxable year. Adjusted current earnings are not decreased, however, to the extent of any decrease in the LIFO recapture amount below the baseline LIFO recapture amount, as defined in paragraph (f)(3)(iii) (E) of this section. Increases in the LIFO recapture amount increase adjusted current earnings only to the extent of any increase above the baseline LIFO recapture amount.

(ii) Beginning LIFO and FIFO inventory. For purposes of computing the increase or decrease in the LIFO recapture amount, the beginning LIFO and FIFO inventory amounts for the first taxable year beginning after December 31, 1989, are—

(A) The ending LIFO inventory amount used in computing pre-adjustment alternative minimum taxable income for the last year beginning before January 1, 1990, and

(B) The ending FIFO inventory amount for the last year beginning before January 1, 1990 computed with the adjustments described in section 56 (other than the adjustment described in section 56(g)) and section 58, the items of tax preference described in section 57 and using the methods used in computing pre-adjustment alternative minimum taxable income.

(iii) Definitions—(A) LIFO recapture amount. The LIFO recapture amount is the excess, if any, of—

(1) The inventory amount of the assets under the FIFO method, computed using the rules of this section, over

(2) The inventory amount of the assets under the LIFO method, computed using the rules of this section.

(B) FIFO Method. For purposes of this paragraph, the FIFO method is the first in, first out method described in section 471, determined by using—

(1) The retail method if that is the method the taxpayer uses in computing pre-adjustment alternative minimum taxable income, or

(2) The lower of cost or market method for all other taxpayers.

(C) LIFO method. The LIFO method is the last in, first out method authorized by section 472.

(D) *Inventory amounts.* Except as otherwise provided, inventory amounts are computed using the methods used in computing pre-adjustment alternative minimum taxable income. To the extent inventory is treated as produced or acquired during taxable years beginning after December 31, 1989, the inventory amount is determined with the adjustments described in sections 56 and 58 and the items of tax preference described in section 57. Thus, for example, the amount of depreciation to be capitalized under section 263A with respect to inventory produced in taxable years beginning after December 31, 1989 is based on the depreciation allowed under the rules of paragraph (b) of this section. See paragraph (a)(5) of this section.

(E) *Baseline LIFO recapture amount.* The baseline LIFO recapture amount is the excess, if any, of the beginning FIFO inventory amount (as defined in paragraph (f)(3)(ii)(2) of this section) for the first taxable year beginning after December 31, 1989 over the beginning LIFO inventory amount (as defined in paragraph (f)(3)(ii)(1) of this section) for the first taxable year beginning after December 31, 1989.

(iv) *Example.* The following example illustrates this paragraph (f)(3).

(A) M Corporation, a calendar-year taxpayer, uses the LIFO method of accounting for its inventory for purposes of computing pre-adjustment alternative minimum taxable income. M's ending LIFO inventory for purposes of computing pre-adjustment alternative minimum taxable income on December 31, 1989, is \$300. M computes a \$500 FIFO inventory amount on that date, after applying the provisions of section 263A along with the adjustments and preferences required in computing pre-adjustment alternative minimum taxable income. M's FIFO and LIFO ending inventory amounts at the close of its taxable years, its LIFO reserves, and its adjustment under this paragraph (f)(3) are as follows:

| | 1989 | 1990 | 1991 | 1992 |
|---|-------|-------|-------|-------|
| Ending inventory: | | | | |
| A. FIFO | \$500 | \$360 | \$560 | \$600 |
| B. LIFO | 300 | 180 | 320 | 440 |
| LIFO recapture amount A.-B. | \$200 | \$180 | \$240 | \$160 |
| Change in LIFO recapture amount | | (20) | 60 | (80) |
| Adjustment under paragraph (f)(3) | | | 40 | (40) |

a. Beginning FIFO inventory amount under paragraph (f)(3)(ii) of this section.

b. Beginning LIFO inventory amount under paragraph (f)(3)(ii) of this section.

c. Baseline LIFO recapture amount under paragraph (f)(3)(iii)(E) of this section.

(B) M has no adjustment under this paragraph (f)(3) in 1990 because its LIFO

recapture amount decreased below the baseline LIFO recapture amount. M increases its adjusted current earnings by \$40 in 1991 because the \$60 increase in its LIFO recapture amount results in only a \$40 increase above the baseline LIFO recapture amount. M decreases its adjusted current earnings by \$40 in 1992 because \$40 of the decrease in its LIFO recapture amount is below the baseline LIFO recapture amount.

(m) *Adjusted current earnings of a foreign corporation.*—(1) *In general.* The alternative minimum taxable income of a foreign corporation is increased by 75 percent of the excess of—

(i) The effectively connected adjusted current earnings of the foreign corporation for the taxable year over

(ii) The effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year.

(2) *Definitions.*—(i) *Effectively connected pre-adjustment alternative minimum taxable income.* Effectively connected pre-adjustment alternative minimum taxable income is the taxable income of the foreign corporation for the taxable year, determined with the adjustments in sections 56 and 58 (except for the adjustment for adjusted current earnings and the alternative tax net operating loss) and increased by the tax preference items of section 57, but determined taking into account only items of income, expense, loss and deduction of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(ii) *Effectively connected adjusted current earnings.* Effectively connected adjusted current earnings is the effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year, adjusted as provided in section 56 (g) and this section, but determined taking into account only items of income, expense, loss and deduction of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) *Rules for determining effectively connected preadjustment alternative minimum taxable income and effectively connected adjusted current earnings.* The principles of section 864(c) and the regulations thereunder, and any other applicable provision of the Code, apply in determining whether items of income, expense, loss and deduction of the foreign corporation are effectively connected (or treated as effectively

connected) with the conduct of a trade or business in the United States.

(4) *Certain exempt amounts.* Effectively connected adjusted current earnings and effectively connected pre-adjustment alternative minimum taxable income do not include any item of income, or any item of expense, loss or deduction that is attributable to income that is exempt from United States taxation under section 883 or pursuant to an applicable income tax treaty. See section 894.

(r) *Election to use regular tax inventories for alternative minimum tax purposes.*—(1) *In general.* If a taxpayer makes an election under this paragraph (r), the rules of paragraph (r)(2) of this section shall apply for purposes of computing the taxpayer's pre-adjustment alternative minimum taxable income and adjusted current earnings.

(2) *Effect of election.*—(i) *Inventories.* The taxpayer's inventory amounts as determined for purposes of computing taxable income are used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings. Subject to the further modification described in paragraph (r)(2)(ii) of this section, the taxpayer's cost of sales as determined for purposes of computing taxable income are also used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings.

(ii) *Modifications required.*—(A) *In general.* If a taxpayer makes an election under this paragraph (r), pre-adjustment alternative minimum taxable income and adjusted current earnings are computed with the modifications described in this paragraph. The items of adjustment under sections 56 and 58 and the items of tax preference under section 57 are computed without regard to the portion of those adjustments and preferences which, but for the election described in this paragraph, would have been capitalized in ending inventory. For example, pre-adjustment alternative minimum taxable income is increased by the excess of the depreciation allowable for the taxable year under section 168 for purposes of computing taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A). Adjusted current earnings is further increased by the excess of the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-

adjustment alternative minimum taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(g)(4)(A) for purposes of computing adjusted current earnings (determined without regard to section 263A). Thus, the modification described in the preceding sentence does not duplicate modifications taken into account in computing pre-adjustment alternative minimum taxable income. See paragraph (a)(6)(ii) of this section.

(B) *Negative modifications allowed.* If an election is made under this paragraph (r) and the amount of any adjustment under sections 56 and 58, determined after modification under paragraph (r)(2)(ii)(A) of this section, is a negative amount, then this amount reduces pre-adjustment alternative minimum taxable income or adjusted current earnings. No negative adjustment under this paragraph (r)(2)(ii)(B) is allowed for the items of tax preference under section 57.

(iii) *LIFO recapture adjustment.* If a taxpayer makes an election under this paragraph (r), for purposes of computing the LIFO inventory adjustment under paragraph (f)(3) of this section for taxable years beginning after December 31, 1989—

(A) The LIFO inventory amount as determined for purposes of computing taxable income is used in lieu of the LIFO inventory amount as determined under paragraph (f)(3)(iii) of this section.

(B) The FIFO inventory amount is computed without regard to the adjustments under sections 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57, and

(C) The beginning LIFO and FIFO inventory amounts under paragraph (f)(3)(ii) of this section are the ending LIFO inventory amount as determined for purposes of computing taxable income and the ending FIFO inventory amount computed without regard to the adjustments under section 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57 for the last taxable year beginning before January 1, 1990.

(3) *Time and manner of making election—(i) Prospective election.* If the taxpayer has never filed a federal income tax return on which the election described in paragraph (r) could apply, or if the taxpayer has computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior tax years in accordance with the method described in this paragraph (r), the election under this paragraph (r) may be made by attaching a statement to the taxpayer's timely

filed (including extensions) original federal income tax return for its first taxable year for which the election could apply, or its first taxable year ending after [Insert date that this regulation is published as a final regulation in the Federal Register.] The statement must:

(A) Give the name, address and employer identification number of the taxpayer, and

(B) Identify the election as made under this paragraph (r). A change in method of accounting made in accordance with this paragraph (r)(3)(i) is treated as made with the advance consent of the Commissioner.

(ii) *Retroactive election.* If the taxpayer has computed pre-adjustment alternative minimum taxable income or adjusted current earnings for any prior tax year in a manner other than the manner described in this paragraph (r), the election under this paragraph (r) must be made by attaching a statement to the taxpayer's amended federal income tax return for the earliest taxable year for which the period of limitations under section 6501(a) has not expired and which begins after December 31, 1986. The election under this paragraph (r)(3)(ii) must be filed on or before [Insert date that is 180 days after this regulation is published as a final regulation in the Federal Register]. The amended return must contain the statement described in paragraph (r)(3)(i) of this section. In addition, the statement must contain a representation that the taxpayer agrees to modify its pre-adjustment alternative minimum taxable income and adjusted current earnings in accordance with paragraph (r)(2) of this section. The change in method of accounting is treated as made with the advance consent of the Commissioner and the taxpayer must include the entire adjustment required under section 481(a), if any, in pre-adjustment alternative minimum taxable income and adjusted current earnings on the amended return for the year of the election. The taxpayer must also reflect the method of accounting described in paragraph (r)(2) of this section on amended returns filed for all tax years subsequent to the year of the election for which returns were originally filed before making the election.

(iii) *Election as method of accounting.* Any election or revocation of election under this paragraph (r) is a change in method of accounting subject to section 446(e) and § 1.446-1(e).

(4) *Example.* The following example illustrates the provisions of this paragraph (r).

(i) Corporation L is a calendar year manufacturer of baseball bats and uses the LIFO method of accounting for inventories. During 1987, 1988 and 1989, L's cost of goods sold in computing taxable income was as follows:

| | 1987 | 1988 | 1989 |
|---------------------------------|-------|-------|-------|
| Beginning LIFO inventory | 3,000 | 4,000 | 5,000 |
| Purchases and other costs | 9,000 | 9,000 | 9,000 |
| Ending LIFO inventory | 4,000 | 5,000 | 6,000 |
| Cost of goods sold | 8,000 | 8,000 | 8,000 |

L has no preferences under section 57 during 1987, 1988 and 1989. L's sole adjustment in computing alternative minimum tax during 1987, 1988 and 1989 was the depreciation adjustment under section 56(a)(1). Depreciation determined for both production and nonproduction assets under section 168 and under section 56(a)(1) during 1987, 1988 and 1989 was as follows:

| | 1987 | 1988 | 1989 |
|--|-------|-------|-------|
| Section 168 depreciation | 1,800 | 1,800 | 1,800 |
| Section 56(a)(1) depreciation | 900 | 900 | 900 |
| Depreciation difference | 900 | 900 | 900 |
| Portion of difference capitalized in the increase in inventory | (100) | (100) | (100) |
| Adjustment required under section 56(a)(1) | 800 | 800 | 800 |

In computing taxable income a portion of each year's section 168 depreciation attributable to production assets is deducted currently and a portion is capitalized into the increase in ending inventory. For 1987, 1988 and 1989, L computed alternative minimum tax by deducting the cost of goods sold which was reflected in taxable income (\$8,000) in accordance with paragraph (r)(2)(i) of this section. For 1987, 1988 and 1989, L also modified its adjustments under sections 56 and 58 and its preferences under section 57 to disregard the portion of any adjustment or preference that was capitalized in inventory. Thus, under section 56(a)(1) L increased alternative minimum taxable income during each year by \$900.

L is eligible to make the election under paragraph (r)(1) of this section in accordance with paragraph (r)(3)(i) of this section (a prospective election).

(ii) L determines that the inventory amount at December 31, 1989, computed on a FIFO basis after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57, is \$10,000.

In computing the LIFO recapture amount described in paragraph (f)(3)(iii)(A) of this section, the baseline LIFO recapture amount

described in paragraph (f)(3)(iii)(E) of this section is determined as follows:

| | |
|--------------------------------------|--------|
| Beginning FIFO inventory amount..... | 10,000 |
| Beginning LIFO inventory amount..... | 6,000 |
| Baseline LIFO recapture amount..... | 4,000 |

(iii) L must compute future LIFO recapture amounts by reference to (A) the FIFO inventory amount after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57 and (B) the LIFO inventory amount used in computing taxable income.

(s) *Adjustment for alternative tax energy preference deduction*—(1) *In general.* For purposes of computing adjusted current earnings, any taxpayer claiming a deduction under section 56(h) must properly adjust basis by the portion of the deduction allowed under section 56(h) which is attributable to adjustments under section 56(g)(4). In taxable years following the taxable year in which the section 56(h) deduction is claimed, basis recovery (including amortization, depletion and gain on sale) must properly take into account this basis reduction.

(2) *Example.* The following example illustrates the provisions of this paragraph:

Corporation A, a calendar year taxpayer, incurs \$100 of intangible drilling costs on January 1, 1994 and as a result of these intangible drilling costs A claims a deduction under section 56(h) of \$40. Assume that \$20 is attributable to the adjustment under paragraph (f)(1) of this section. A must reduce by \$20 the amount of intangible drilling costs to be amortized under paragraph (f)(1) of this section in 1995 through 1998 (the balance of the 60 month amortization period).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-6172 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-104-90]

RIN 1545-AP37

Tax Treatment of Salvage and Reinsurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the treatment of salvage and reinsurance in computing the deduction of property and casualty insurance companies for losses incurred. Changes to the applicable law were made by the Revenue

Reconciliation Act of 1990. The regulations are necessary to provide property and casualty insurance companies with guidance needed to comply with these changes.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-104-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky (202) 568-4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection(s) of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Internal Revenue Service, Office of Management and Budget, Washington, DC 20503, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in the regulation is in § 1.832-4. This information is required for use by the Internal Revenue Service in monitoring compliance with the transition rules relating to salvage contained in the Revenue Reconciliation Act of 1990. The likely respondents are insurance companies.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. *Estimated total reporting burden:* 5000 hours.

The estimated burden per respondent/recordkeeper varies from one hour to three hours, depending on individual circumstances, with an estimated average of two hours.

Estimated number of respondents: 2500.

Estimated frequency of responses: one time only.

Background

This document sets forth proposed income tax regulations relating to the treatment of salvage and reinsurance

under section 832(b)(5)(A) of the Internal Revenue Code. Section 832(b)(5)(A) was amended by section 11305 of the Revenue Reconciliation Act of 1990, 104 Stat. 1388 ("the 1990 Act").

Explanation of Provisions

In general

Section 832(b)(3) of the Code defines the "underwriting income" of a nonlife insurance company as premiums earned less losses incurred and expenses incurred. Under section 832(b)(5)(A), "losses incurred" are computed by taking into account paid losses, unpaid losses, and salvage and reinsurance. For tax years beginning before January 1, 1990, the statute required salvage and reinsurance recoverable to be taken into account as a reduction to paid losses. For those tax years, the regulations required salvage recoverable to be taken into account only to the extent that the salvage could be treated as an asset for state statutory accounting purposes.

For tax years beginning after December 31, 1989, the 1990 Act amended section 832(b)(5)(A) to provide the following rules for computing losses incurred. First, paid losses are reduced by salvage and reinsurance recovered during the tax year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. Finally, this sum is adjusted to reflect any changes in discounted estimated salvage recoverable and in estimated reinsurance recoverable.

These proposed regulations would amend the current regulations to conform with the new treatment of salvage required by the 1990 Act. The regulations clarify that estimated salvage recoverable includes estimates of salvage recoveries that may not be treated as assets for state statutory accounting purposes ("non-admitted salvage recoverable"). See H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1071 (1990).

For tax years beginning before 1992, the proposed regulations require estimated salvage recoverable to be discounted either: (1) By using the applicable discount factors published by the Commissioner for salvage recoverable, or (2) by using the loss payment pattern for a line of business as the salvage recovery pattern for the line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). (The Commissioner will publish a revenue procedure containing salvage recovery patterns and discount factors for tax

years beginning before 1992. In 1992, the Secretary is required to redetermine loss payment patterns for purposes of section 846 and will redetermine salvage recovery patterns for purposes of section 832(b)(5)(A)). The Internal Revenue Service invites comments identifying circumstances in which it would be appropriate, for tax years beginning after December 31, 1991, to allow taxpayers to use discount factors computed on the basis of their own experience with salvage recoveries.

Transitional rules

The 1990 Act changed the federal tax treatment of salvage by requiring taxpayers to take into account non-admitted salvage recoverable in the computation of losses incurred. Section 11305(c)(2)(A) of the Act treats as a change in method of accounting any change required by the Act in computing losses incurred. However, section 11305(c)(2)(B) of the 1990 Act provides that a taxpayer must take into account only 13% of the section 481 adjustment that would otherwise have been required as a result of the change in method of accounting.

Section 11305(c)(4) of the 1990 Act provides a rule that applies to an overestimate of the section 481 adjustment. Under this rule, a taxpayer is required to include in gross income 87% of any amount by which the section 481 adjustment is overestimated. The rule is applied on a look-back basis by comparing the amount of the section 481 adjustment that would have been required (but for section 11305(c)(2)(B) of the Act and any discounting) to the actual amounts of salvage recoveries (together with any undiscounted estimated salvage recoverable) that are attributable to losses incurred in accident years beginning before 1990. For any tax year beginning after December 31, 1989, any excess of the section 481 adjustment over this amount is an overestimate for purposes of section 11305(c)(4).

A taxpayer should be prepared to establish to the satisfaction of the district director that the taxpayer's estimate of salvage recoverable for pre-1990 accident years does not exceed actual salvage recoveries related to such years. The district director may require any insurance company to submit such detailed information with respect to its actual experience with salvage related to pre-1990 accident years as is deemed necessary to establish that the estimate does not exceed actual salvage recoveries.

Section 11305(c)(3) of the 1990 Act allows a taxpayer to deduct 87% of the discounted amount of estimated non-

admitted salvage recoverable that the taxpayer took into account for the last tax year beginning before January 1, 1990 (the last tax year before the 1990 Act required salvage of that type to be taken into account in computing losses incurred).

A taxpayer claiming this deduction must be able to establish to the satisfaction of the district director that it took non-admitted salvage recoverable into account for the last tax year before January 1, 1990. A taxpayer may not satisfy this requirement merely by stating that non-admitted salvage recoverable is reflected in the taxpayer's loss reserves. A taxpayer may satisfy this requirement by disclosing to the relevant state regulatory authority the extent to which the taxpayer took into account non-admitted salvage recoverable in computing underwriting income on the 1989 annual statement.

Special analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rule. If a public hearing is held, notice of the time and place for the hearing will be published in the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury

Department participated in their development.

List of Subjects in 26 CFR 1.801-1 through 1.832-7T

Income taxes; Insurance companies.

Proposed Amendments to the Regulations

For the reasons set out in the preamble, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.832-4 also issued under 26 U.S.C. 832(b)(5)(A).

Par. 2. Section 1.832-4T is redesignated as 1.832-4 and as so redesignated is amended by removing the last sentence of paragraph (a)(5), by revising the section heading and paragraphs (b), (c), (d), and (e). The revised provisions read as follows:

§ 1.832-4 Gross income.

* * * * *

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses. These losses must be stated in amounts which, based upon the facts in each case and the company's experience with similar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of a fair and reasonable estimate will be disallowed as a deduction. The district director may require any insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) For purposes of section 832(b)(5)(A)(iii) estimated salvage and reinsurance recoverable must include estimates of all anticipated recoveries on account of salvage, whether or not the salvage is treated, or may be treated, as an asset for state statutory accounting purposes. Recoveries on account of salvage must be estimated based on the facts of each case and the company's experience with similar

cases. Except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin, estimated recoveries on account of salvage must be discounted either: (1) By using the applicable discount factors published by the Commissioner for salvage recoverable, or (2) by using the loss payment pattern for a line of business as the salvage recovery pattern for the line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). For purposes of section 832(b)(5)(A) and the regulations thereunder, the term "salvage" includes subrogation claims.

(d) Section 11305(a) of the Revenue Reconciliation Act of 1990 ("the 1990 Act") requires a taxpayer to take into account, in computing the deduction for losses incurred, salvage recoverable that cannot be treated as an asset for state statutory accounting purposes ("non-admitted salvage recoverable"). Section 11305(c)(2)(A) of the 1990 Act treats as a change in method of accounting any change required by the Act in computing losses incurred. Under section 11305(c)(2)(B) of the 1990 Act, a taxpayer must take into account 13% of the adjustment that would otherwise be required under section 481 as a result of the change in accounting method.

(e) Section 11305(c)(3) of the 1990 Act allows a taxpayer to deduct 87% of the discounted amount of non-admitted salvage recoverable that the taxpayer took into account in the last tax year beginning before January 1, 1990. A taxpayer that claims this deduction must establish to the satisfaction of the district director that the deduction represents only the discounted amount of non-admitted salvage recoverable that was actually taken into account by the taxpayer in computing losses incurred for that tax year. This requirement will not be met if the taxpayer merely states that salvage recoverable with respect to non-admitted assets is reflected in the taxpayer's loss reserves. This requirement is deemed to be met if the taxpayer either—

(1) Disclosed on its 1989 annual statement the extent to which non-admitted salvage recoverable was taken into account in computing losses paid or unpaid losses (whichever is applicable) in the underwriting and investment exhibit of that annual statement; or

(2) Files with the appropriate state regulatory authority, on or before July 15, 1991, a statement disclosing the

extent to which non-admitted salvage recoverable was so taken into account.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-5972 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[CO-51-89]

RIN 1545-AP02

Treatment of Gain or Loss on Deemed Sale of Affected Target Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the *Federal Register*, the Internal Revenue Service is issuing temporary regulations to provide rules concerning the determination of the amount of gain or loss recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (CO-51-89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Keith G. Medleau of the Office of Assistant Chief Counsel (Corporate) on 202-566-3551 (not a toll-free number). For foreign aspects, contact Ken Allison of the Office of Associate Chief Counsel (International) on 202-566-6442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545-1115), Washington, DC 20503, with copies to the Internal Revenue Service,

Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in section 26 CFR 1.338-6T. This information is required and will be used by the Internal Revenue Service to determine whether the proper amount of gain or loss is recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 310 hours.

Estimated average annual burden hours per respondent: 2.4 hours.

Estimated number of respondents: 130.

Estimated annual frequency of responses: Two times generally.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the *Federal Register* add § 1.338-6T to part 1 of title 26 of the Code of Federal Regulations (CFR). The temporary regulations provide rules on the determination of the amount of gain or loss recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. For the text of the new temporary regulations, see T.D. 8339, published in the Rules and Regulations portion of this issue of the *Federal Register*. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)

of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is Keith Medleau of the Office of Chief Counsel, Internal Revenue Service, except that the principal author of § 1.338-6T(d) is Ken Allison of that office. However, other personnel from the Internal Revenue Service and the Department of Treasury participated in developing the regulations on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-5823 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219-AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule concerning criteria and procedures for its proposed assessment of civil penalties from March 18, 1991, to April 2, 1991, in response to requests from the mining community.

DATES: Written comments must be received on or before April 2, 1991.

ADDRESSES: Send written comments to the Office of Standards, Regulations, and Variances, MSHA, room 631

Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 28, 1990, MSHA published a proposed rule (55 FR 53482) to revise the MSHA regulations governing the criteria and procedures used for assessing civil penalties. The proposal, which would update part 100, is responsive to the Omnibus Budget Reconciliation Bill that became effective on November 5, 1990. It also reflects inflation by including across-the-board increases for all categories of penalties. In addition, it includes penalty increases for a mine with an excessive history of violations. The comment period for the proposed rule was scheduled to close on March 1, 1991, but subsequently was extended to March 18, 1991 (56 FR 8171). Due to requests from the mining community for more time in which to prepare their comments, MSHA is extending the comment period to April 2, 1991. All interested parties are encouraged to submit comments prior to this date.

Dated: March 11, 1991.

William J. Tattersall,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-6198 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) seeks comments regarding a petition submitted by the State of Maryland, Department of Natural Resources, pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to amend OSM's regulations governing assessment conferences so as to clarify the appeal process for mandatory civil penalty assessments. The petitioner maintains that the existing regulations at 30 CFR 845.18 do not provide

adequate guidance to a conference officer for review and compromise of such assessments. Mandatory civil penalty assessments are defined by the petition as those required to be made under 30 CFR 845.12 (a), (b), and 845.15(b) for cessation orders, notice of violations assigned 31 points or more under the point system for penalties found at 30 CFR 845.13, and for failure to abate cessation orders.

OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSM in making a decision to grant or deny the petition. Publication of this notice seeking comments on the petition reflect OSM's view that the public interest will be served by the receipt of comments on the petition. It does not reflect a determination that the petition itself presents a reasonable basis for the requested changes.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern standard time on April 15, 1991.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Administrative Record, room 5131A, 1951 Constitution Avenue, NW., Washington, DC 20240, or hand deliver to the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Administrative Record, room 5131, 1100 "L" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone (202) 208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the proposed revisions, and should explain the reasons for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR part 845 are available for inspection and may be obtained at the location listed under "ADDRESSES."

Public Hearings

OSM will not hold a public hearing on the proposed revision, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m. Eastern standard time, during the comment period. In order to arrange such a meeting, call or write to the person identified under "FOR FURTHER INFORMATION CONTACT."

II. Background and Substance of Petition

OSM received a letter dated January 24, 1991, from the State of Maryland, Department of Natural Resources petitioning OSM to initiate a rulemaking to amend its regulations found at 30 CFR 845.18 to provide guidance in the review and compromise of mandatory civil penalty assessments.

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the Federal Register. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an

environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(C), is needed.

List of Subjects in 30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: February 26, 1991.

Harry M. Snyder,
Director.

Appendix

The text of the petition dated January 24, 1991, from the State of Maryland, Department of Natural Resources is as follows:

Maryland Department of Natural Resources
Water Resources Administration, Bureau of
Mines, 69 Hill Street, Frostburg, Maryland
21532.

January 24, 1991.

Mr. Harry M. Snyder, Director, Office of
Surface Mining, Reclamation and
Enforcement, Department of the Interior,
Washington, DC 20240.

Dear Mr. Snyder: In accordance with 30
CFR 700.12, I have enclosed a Petition for
Rulemaking concerning 30 CFR part 845—
Civil penalties, specifically relating to the
appeal process for mandatory civil penalties.
Your attention to this matter would be greatly
appreciated.

Sincerely yours,

Anthony F. Abar,
Director.
AFA:sas
Enclosure

**Before the Office of Surface Mining
Reclamation and Enforcement United
State Department of Interior; Petition for
Rulemaking Under the Surface Mining
Control and Reclamation Act of 1977;
State of Maryland Department of
Natural Resources Water Resources
Administration Bureau of Mines**

I. Introduction

Pursuant to the Surface Mining Control and
Reclamation Act of 1977, 30 U.S.C. 1211(g), its
implementing regulations, 30 CFR 700.12 and
the Administrative Procedures Act, 5 U.S.C.
553(e), the Maryland Bureau of Mines ("the
Petitioner") petitions the Director of the
Office of Surface Mining Reclamation and
Enforcement (OSMRE) for certain
amendments and modifications to regulations
contained in 30 CFR part 845 relating to the
appeal process for mandatory civil penalties.
For the purpose of this petition, "mandatory"
is defined as every violation for which the
Surface Mining Control and Reclamation Act
of 1977 (SMCRA) and/or 30 CFR part 845
requires that a civil penalty shall be assessed
as indicated below.

| SMCRA | 30 CFR part 845 | Type of violation |
|----------------------|------------------------------------|---|
| Section 518(b) | 845.12(a) 845.12(a) | Cessation Order. Notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13. |
| Section 518(h) | 845.15(b) | Failure to Abate Cessation Order, a civil penalty of not less than \$750 per day for each day the violation continues to exist. |

The proposed amendments will clarify the
process for appeal of civil penalties.

II. Petitioner

The Bureau of Mines is an agency of the
State of Maryland, Department of Natural
Resources, Water Resources Administration
responsible for the regulation of surface coal
mining and reclamation within the State of
Maryland. Maryland submitted its permanent
State program on March 3, 1980. The
Maryland Program was approved by OSMRE
on February 18, 1982.

III. Proposed Amendments and Modifications

The Procedures for requesting and
conducting assessment conferences to review
proposed assessments for notices of violation
and cessation orders are set forth in 30 CFR
845.18. The procedures set forth in this
regulation are utilized for review of all civil
penalty assessments. However, the only
direction given to the conference officer is
that all relevant information on the violation
should be considered and that the conference
officer should either: (1) Settle the issues and
execute a settlement agreement; or (2) affirm,
lower or vacate the civil penalty. There is no
distinction in the regulations for reviewing
discretionary civil penalty assessments and
mandatory civil penalty assessments. The
existing regulations are vague and do not
provide adequate guidance to a conference
officer for review of assessments, especially
mandatory civil penalty assessments.

Petitioner requests that OSMRE review 30
CFR 845.18 and propose amendments which
specify procedures to be followed for review
of various civil penalties authorized and
mandated in section 518 of SMCRA and 30
CFR 845.12 and 845.15(b) including what
information is relevant, what criteria are to
be considered for compromising civil
penalties, and which party, if any, to an
appeal, may compromise the amount of the
civil penalty for each mandatory civil
penalty. Petitioner has not provided proposed
language for the procedures to be utilized in
reviewing assessments. If proposed language
is required in order for OSMRE to consider
the petition complete, petitioner will submit
proposed amendments to 30 CFR 845.18

However, the petitioner, with this petition, is simply requesting OSMRE to provide regulatory guidance. The petitioner is not advocating particular procedures/criteria.

IV. Statement of Facts and Law in Support of Amendment of Existing Federal Assessment Conference Regulations

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides procedures for the assessment and appeal of civil penalties. Section 518(a) provides authority for the assessment of civil penalties for notices of violation and mandates that violations which lead to the issuance of a cessation order shall be assessed a civil penalty.

The permanent program regulations at 30 CFR 845.12(a) require that a civil penalty shall be assessed for each cessation order. Section 30 CFR 845.12(b) requires that a civil penalty shall be assessed for each notice of violation in the violation is assigned 31 points or more under the point system described in § 845.13. Section 30 CFR 845.15(b) requires that if an operator fails to correct a violation within the period permitted for its correction the operator shall be assessed a civil penalty of not less than \$750 per day for each day the violation continues.

Section 518 (b) and (c) of SMCRA set forth the procedures for appeal of civil penalties. However, SMCRA does not: (1) Distinguish between procedures to appeal civil penalties for violations (NOV), cessation orders (CO), and for failure to abate cessation orders (FTACO); or (2) set forth criteria for compromising NOV, CO or FTACO civil penalties.

The permanent program regulations for appeal of civil penalty assessments do not clarify the ambiguity of SMCRA. Section 30 CFR 845.18 sets forth procedures for assessment conferences. Presumably these procedures apply to civil penalties assessed for CO's, NOV's which are assigned 31 points or more, and FTACO's. Section 30 CFR 845.18(b)(3) also allows the conference officer, after considering all relevant information, to either settle the issues and execute a settlement agreement or affirm, raise, lower, or vacate the penalty. Thus, following the procedures set forth in 30 CFR 845.18, the conference officer may lower or vacate the penalty assessed for CO's, NOV's which are assigned 31 points or more, FTACO's, as well as NOV's. The only guidance given to conference officers in 30 CFR 845.18(b)(3) is that all relevant information on the violation shall be considered. No other guidance is provided that indicates the relevant information/criteria to be considered during the conference for the different types of civil penalty assessments, the amount of civil penalty compromise or whether these mandatory penalties can, in fact, be compromised or vacated.

Referring to the FTACO civil penalty required under 30 CFR 845.15(b), OSMRE has stated:

In reviewing the rulemaking history of the Federal civil penalty regulations, Federal case law decisions, and administrative law decisions, . . . it is clear that civil penalties for failure-to-abate cessation orders carry a

mandatory minimum daily penalty amount of \$750 per day . . . Under SMCRA and the Federal regulations, a conference officer or hearing examiner cannot waive or reduce mandatory failure-to-abate civil penalties. The only variable that enters into the . . . computation of the penalty amount owed is the determination of the actual number of days for which the penalty is to be assessed. (See attached letter from Hord Tipton, Deputy Director, OSMRE to Anthony Abar, Director, Maryland Bureau of Mines).

However, the rulemaking history of the Federal civil penalty regulations, indicates that OSMRE's interpretation of the FTACO civil penalty provision of SMCRA allowed for compromise of the civil penalty. The regulatory analysis of the final Permanent Regulatory Program regulation published in the March 13, 1979 Federal Register, Vol 44, No 50, Book 2, on page 15308, includes the following discussion:

"A new subsection (c) was added to clarify the manner in which both the mandatory \$750/day penalty for failure to abate and the discretionary penalty for continuing violations will be assessed, and to provide for reassessment to take account of good faith compliance or other facts not available at the time initial assessment was made. As in the case of good faith points, the mandatory \$750/day penalty and the discretionary penalty for continuing violations cannot properly be finally assessed until after the violation is abated. The new subsection (c) provides for authority for reassessment."

Moreover, the permanent program regulations (30 CFR part 845) do not identify the variables that enter into the appeal process for civil penalties assessed for FTACOs, NOV's, or CO's. The OSMRE should amend its regulations to reflect Federal case law decisions and administrative law decisions, and to insure that State programs contain procedures for appeal, including criteria for compromise, of civil penalties that are the same or similar.

V. Conclusion

The requested amendments will provide specific criteria to be used by conference and hearing officers during review of mandatory civil penalties.

Accordingly, for the reasons stated herein, the Petitioner requests that the Director, OSMRE immediately grant the petition pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1211(g) and 30 CFR 700.12 and promptly commence to review this issue and promulgate amendments which clarify the procedures to be used to review mandatory civil penalties.

Respectfully submitted,
State of Maryland, Department of Natural Resources, Water Resources

Administration, Bureau of Mines, 69 Hill Street, Frostburg, MD 21532.

Anthony F. Abar,
Director.

June 27, 1990.

Mr. Anthony F. Abar, Director, Maryland Department of Natural Resources, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532.

Dear Mr. Abar: This is in response to your letter of May 14, 1990, to the Charleston Field Office Director and telephone conversation with David G. Hartos of our Eastern Field Operations Office concerning civil penalty assessment, reduction, and compromise matters. I understand that you have suggested that the Office of Surface Mining Reclamation and Enforcement (OSM) consider either amending or clarifying its civil penalty regulations to address several concerns relating to failure-to-abate cessation orders which your office has been discussing with our field personnel.

In reviewing the rulemaking history of the Federal civil penalty regulations, Federal case law decisions, and administrative law decisions, I believe that it is clear that civil penalties for failure-to-abate cessation orders carry a mandatory minimum daily penalty amount of \$750.00 per day as required by section 518(h) of the Surface Mining Control and Reclamation Act (SMCRA). Under SMCRA and the Federal regulations, a conference officer or hearing examiner cannot waive or reduce mandatory failure-to-abate civil penalties. The only variable that enters into the conference officer's or hearing examiner's computation of the penalty amount owed is the determination of the actual number of days for which the penalty is to be assessed.

Given the above, OSM has no plans to initiate rulemaking on this subject. If you believe that the Maryland program is unclear in this area, you may wish to consider appropriate rulemaking at the State level.

Under the Federal regulations at 30 CFR 700.12, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. Should you wish to submit a petition for OSM to initiate rulemaking, please forward a petition that addresses the criteria of 30 CFR 700.12. That rule specifies that a petition shall be a concise statement of the facts, technical justification, and law which the petitioner believes require issuance, amendment, or repeal of a regulation under SMCRA.

If you have questions or need further information on the rulemaking petition process, please contact Brent Wahlquist, Assistant Director for Program Policy at (202) 208-4264.

Sincerely,

W. Hord Tipton.

Deputy Director, Operations and Technical Services.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 91-8202 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914**Indiana Regulatory Program
Amendment; Administrative Changes
to the State Program**

AGENCY: Office of Surface Mining
Reclamation and Enforcement (OSM),
Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of proposed Amendment #91-2 submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of proposed changes to the Indiana Surface Mining Statute provisions concerning the administration of the Indiana program. The amendment is intended to make specific changes to the administrative responsibilities and procedures as they affect the approved program.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 15, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on April 9, 1991; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 1, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN, 46204. Telephone: (317) 226-6166.
Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard D. Rieke, Director,
Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:**I. Background**

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated February 15, 1991, (Administrative Record No. IND-0836), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment (Amendment #91-2) to the Indiana program at Indiana Code (IC) 4-26-3-27.8; IC 13-4-1; and IC 14-3-3. The proposed amendment is part of Indiana's 1990 Senate Enrolled Act No. 362 (Public Law 38-1990). The amendment would provide for the following changes to the Indiana program:

(a) Provides for the continuation of the Natural Resources Commission (NRC), the Department of Natural Resources (DNR), and other agencies or elements of DNR.

(b) Requires the development of a policy and procedures manual.

(c) Expands the list of persons to be notified by a permit applicant at the time of filing a permit application.

(d) Allows for a public hearing to be held prior to a decision on a surface coal mining and reclamation operation permit.

(e) Transfers authority for making decisions on permit applications from the NRC to the Director, DNR.

(f) Specifies when a permit is to be issued.

(g) Clarifies the effective date of permits issued.

(h) Expands the list of persons to be notified upon issuance of a permit.

(i) Transfers permit application and revision decisions from the NRC to the Director, DNR.

(j) Requires rules to define nonsignificant revisions of permits.

(k) Clarifies that hearing officers are to be appointed by the NRC.

(l) Clarifies the makeup and background requirements for persons appointed to the NRC.

(m) Clarifies that administrative law judges are to be appointed by the NRC.

(n) Establishes over the Division of Reclamation the Bureau of Mine Reclamation, the Director of which will report directly to the Director of the Department of Natural Resources. The amendment also would not establish an advisory board or council between the Bureau and the Department.

(o) Establishes the NRC as the ultimate authority for all administrative appeals and requires the NRC to adopt rules to carry out its duties.

(p) Adds the requirements that all permit decisions are to be made by the Director, DNR or his/her designee.

(q) Adds the requirement that all hearings before the DNR are to be heard by the NRC.

(r) Requires the preparation of a new classification and pay plan for professional, administrative, and technical positions in the Bureau of Mine Reclamation.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on April 1, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM

officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "ADDRESSES." A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1991.

Lewis M. McNay,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91-6176 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-02]

Special Local Regulations; Bay City Fireworks Display, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations on the 6th of July 1991 for the Bay City Fireworks Display.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Search

and Rescue Branch, room 2007A, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7 a.m. and 4:30 p.m. (EDT), Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-91-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this proposed rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Bay City Fireworks Display will be conducted at the south end of the Veterans Memorial Park with the fireworks being fired over the Saginaw River on the 4th, 5th, and 6th of July 1991. This event has been held in the past without special local regulations, but due to the growth of this event and the unusually large number of spectator craft in the area on the last evening of the fireworks display, which could pose hazards to navigation in the area, the Coast Guard is considering a proposal to establish special local regulations for the 6th of July 1991. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI.).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water.)

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0902 to read as follows:

§ 100.35-T0902 Bay City Fireworks Display, Saginaw River, Bay City, MI.

(a) *Regulated area.* That portion of the Saginaw River from the Veterans Memorial Bridge to 1000 yards south of the same bridge.

(b) *Special local regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 p.m. (EDST), 6 July 1991 until 12 a.m. (EDST) on 7 July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a higher degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 91-6222 Filed 3-14-91; 8:45 am]

BILLING CODE 4610-14-M

33 CFR Part 100

[CGD 09-91-01]

Special Local Regulations; Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Nautica Powerboat Classic (formerly Miller Nautica Powerboat Classic). This event will be held on the Cuyahoga River, Cleveland, OH, on the 17th and 18th of August 1991, from 10 a.m. (EDST) until 6 p.m. (EDST), each day. The regulations are needed to provide for the safety of life and property on navigable waters from one hour prior to until one hour after the completion of the event.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast

Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Search and Rescue Branch, room 2007A, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7:30 a.m. and 4:30 p.m. (EDT), Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-91-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this proposal are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Nautica Powerboat Classic will be conducted on the Cuyahoga River, Cleveland, OH, from the mouth of the Old River to the Bascule Bridge, Cuyahoga River, on the 17th and 18th of August 1991. This event will have an estimated 40 outboard tunnel boats for the race, and 13 jet skis and wetbikes conducting safety seminars and performing operating demonstrations, when time permits and between heats, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel traffic one

hour prior to until one hour after the completion of the event within this section of the Cuyahoga River. Areas designated in the application shall be fenced for spectator safety. Spectators shall be prohibited from areas where retaining walls or bulkheads do not exist. Spectators shall be prohibited from the waterfront of the Settlers' Landing Park. Local authorities have been consulted and have agreed that the above steps will be appropriate to insure spectators safety. Racing shall be suspended and race course buoys shall be removed to provide for the passage of commercial vessels on the days of racing. Commercial vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station; Cleveland Harbor, OH).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of the proposed regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposed regulation is expected to be minimal, the Coast Guard certifies, that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add to temporary §100.35-T0901 to read as follows:

§100.35-T0901 Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH.

(a) *Regulated Area:* That portion of the Cuyahoga River, Cleveland, OH, from the mouth of the Old River, southeastward to the Bascule Bridge (north of the Detroit Superior Bridge) Cuyahoga River, Cleveland, OH.

(b) *Special local regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 a.m. (EDST) until 7 p.m. (EDST), each day, on the 17th and 18th of August 1991. However, racing shall be suspended and race course buoys shall be removed to provide for the passage of commercial vessels.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Commercial vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G. A. Renington,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 91-6223 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64, 68

[CC Docket No. 91-35; FCC 91-53]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted this Notice of Proposed Rule Making (NPRM) to propose rules concerning operator service access and to seek comment on options regarding compensation for owners of competitive public payphones for access code calls. The NPRM proposes rules that would require call aggregators to ensure that consumers at aggregator phones can use equal access (10XXX) codes to obtain access to their desired operator service providers (OSPs). The proposed rules would also require aggregator equipment to have the ability to process 10XXX calls selectively, so that only 10XXX dialing sequences that would result in billing to the originating phone could be blocked. These access rules specify different compliance deadlines for different equipment types, with the latest deadline being thirty-six months from the effective date of the new rules. In addition, the NPRM seeks comment on a proposed rule that would require all OSPs to establish either an 800 or a 950 access code number within six months of the new rules' effective date. Regarding compensation for payphone owners, the NPRM seeks comment on three options: first, that compensation from OSPs to whom access code calls are routed will not be prescribed by the Commission; second, that compensation will be prescribed by the Commission and collected and disbursed through a pooling mechanism; and, third, that compensation will be prescribed by the Commission and collected by payphone owners through individual, direct billing arrangements with OSPs.

DATES: Comments must be filed on or before April 5, 1991, and replies must be filed on or before April 19, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in CC Docket No. 91-35 (FCC 91-53), adopted

February 13, 1991, and released March 11, 1991.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. On February 13, 1991, the Commission adopted a Notice of Proposed Rule Making in CC Docket No. 91-35 (released March 11, 1991; FCC 91-53) in order to propose rules concerning operator service access and to seek comment on options regarding compensation for owners of competitive public payphones for access code calls.

2. First, the NPRM addresses the issue of operator service access. Section 226(e)(1) of the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101-435, 104 Stat. 986 (1990) (Operator Services Act), directs the Commission to require within 9 months after enactment (a) that aggregators ensure within a reasonable time that consumers have access to the carrier of their choice through the use of an equal access code, or (b) that all operator service providers (OSPs) make available a "950" or "800" access code number, or (c) both (a) and (b). As a matter of long-term policy, the Commission sees two main reasons for considering 10XXX access to be an important method for achieving the goal of free choice for consumers. First, in the Operator Services Act, Congress directed that all aggregator equipment manufactured or imported after April 17, 1992, "be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes." Hence, by virtue of this requirement alone, 10XXX access will eventually be available from most aggregator locations as equipment is replaced. Second, 10XXX access appears to provide both consumers and carriers with more technical flexibility and choice than do other access methods.

3. Considering these factors, the NPRM proposes to amend §§ 64.704 and 68.318 of the Commission's Rules so as to require, within 3 years, 10XXX access from all aggregator locations. Under the proposed § 64.704(c)(1), aggregators who use existing equipment that can now identify and selectively block 10XXX

dialing sequences that would result in billing to the originating telephone would have to unblock all other 10XXX access immediately. Proposed paragraph (c)(2) requires aggregators to provide 10XXX access through any new equipment that is covered by section 226(f) of the Act. Paragraphs (c)(3) and (c)(4) concern other existing aggregator equipment. These paragraphs would require aggregators to ensure 10XXX access within 12 months of the effective date of these rules for payphones and within 36 months of the effective date of these rules or at the time of equipment replacement, whichever is sooner, for other existing equipment. The NPRM seeks comment on what types of equipment, in addition to private branch exchanges ("PBXs"), would come within the scope of the 36-month rule.

4. In § 68.318(e), the NPRM proposes, *inter alia*, modification requirements for existing equipment consistent with paragraphs (c)(3) and (c)(4) of § 64.704. Under proposed paragraphs (e)(1)(B) and (e)(2)(B) of § 68.318, existing aggregator equipment would be required to have the capability of identifying and selectively blocking 10XXX dialing sequences that would result in billing to the originating phone, without, at the same time, blocking 10XXX calls that would be billed to the caller or an authorized third party. Given such capabilities, the Commission has also proposed, in § 64.704(c)(5), that aggregators be allowed to block 10XXX calls that would result in billing to the originating telephone. These proposals are intended to eliminate, in the long run, any unauthorized, fraudulent, or otherwise uncollectible 10XXX calls being charged to payphone owners and other aggregators, such as hotels, hospitals, airports, and universities, while at the same time allowing consumers to use the 10XXX access method if they wish. Parties should comment on what sort of cost/benefit analysis should be employed in considering requests for waivers of an equipment retrofitting requirement. Comment is also sought on the magnitude of fraudulent 10XXX calling and on specific methods that would be available now or in the near future to control this problem, such as the use of toll restrictors, and CPE or network solutions that are or may become available, including a tariffed screening service to be offered by local exchange carriers that would identify and selectively block 10XXX calls that would result in billing to the originating telephone. Parties are asked to comment on the feasibility such fraud control methods and on how each would bear

on the timing of 10XXX unblocking. As an alternative, the NPRM seeks comment on whether the conversion of existing aggregator equipment to 10XXX capability should be required, as proposed, by definite dates, thus requiring the modification of equipment, or whether conversion to 10XXX capability should occur by attrition as nonconforming equipment is replaced.

5. Although universal establishment of 10XXX access is tentatively proposed as a long-term goal, the Commission seeks comment on whether establishment of 800 or 950 access by all OSPs is also in the public interest, either on a short term or long-term basis. While one option is to require 10XXX unblocking alone, the option of requiring a combination of 10XXX unblocking and the establishment of 800 or 950 access might be necessary because of the short-term or long-term unavailability of the 10XXX access method. Short-term unavailability occurs when existing aggregator equipment has not yet been modified to provide 10XXX access. One way to ensure access to all OSPs until equipment is modified would be to require the temporary establishment of 800 or 950 access would compare to the costs of fraudulent 10XXX calling and of retrofitting equipment to selectively process 10XXX calls.

6. Access through 10XXX will also be unavailable, in the long term, in areas of the country that have not yet converted to equal access or where certain equipment is permanently unable to process 10XXX dialing. In either situation, a caller will be unable to reach an OSP that employs only 10XXX access if the telephone is not presubscribed to that OSP. The Commission therefore seeks comment on whether these cases of long-term 10XXX unavailability would justify requiring the permanent establishment of 800 or 950 access by all OSPs, as proposed in § 64.704(d). The NPRM also seeks comment on whether any other special provision should be made for non-equal access areas and on whether consumers have sufficiently free access to their preferred carriers in these areas, despite the lack of 10XXX access. Comment is also sought on the possibility of requiring the LECs to provide, until conversion to equal access, a tariffed service in which the LECs would, upon receiving a "0-" call, transfer the call to the consumer's requested OSP. More generally, parties are asked to comment on whether such a tariffed service should be required nationwide and on the costs of implementation, the technical feasibility,

and the effectiveness of a "0-" transfer service.

7. The Operator Services Act directs the Commission to determine "whether to prescribe * * * compensation" for owners of competitive public payphones for access code calls. Generally, call aggregators, including competitive public payphone owners, are compensated by the presubscribed OSP for all calls placed through that OSP. Aggregators receive no compensation, however, for access code calls, and this situation grows as access code calling is increasingly facilitated by unblocking.

8. At the outset, the Commission asks interested parties to comment on whether it should declare that it will not prescribe compensation, which is within the Commission's discretion under the Operator Services Act. If the Commission were to prescribe compensation, charges for access code calls could be assessed and disbursed through a compensation pool, and interested parties are asked to comment on this potential approach. The NPRM suggests two alternative mechanisms for such a pool. The first alternative would require each OSP to submit to the administrator of a compensation pool a report of the total number of calling minutes generated by access code calls from competitive public payphones. The administrator would then assess and bill each OSP a per minute charge for such calls. OSPs would pay these charges into the compensation pool, and the administrator would distribute compensation to payphone owners based on their reports of the number of access code calling minutes generated by their payphones. The second alternative would be to develop a payphone compensation pool to which each OSP would contribute a certain percentage of its estimated gross proceeds from all interstate payphone calls, whether or not an access code was used. Each payphone owner would then receive compensation from the pool equal to a percentage of all interstate revenue generated by its payphones. The NPRM also seeks comment on another compensation mechanism, whereby the Commission would prescribe compensation that is based on a per minute charge for access code calls but is collected by payphone owners through individual, direct billing arrangement with OSPs. Comment is sought on a number of issues regarding all of these options, including whether the public interest would be served by foregoing prescribed compensation mechanism; how charges would be calculated; whether a per call charge would be more appropriate than a per

minutes charge; how accounting problems might affect compensation mechanisms; how to verify accounting; how to settle any disputes over compensation by private means; how often charge would be collected and disbursed; what entity would administer a compensation pool; and how administrative costs would be recovered.

9. The Commission recognizes that the alternative compensation mechanisms discussed in the NPRM are potentially complex and expensive. Parties are invited to suggest any more efficient or less costly options. In addition, the Commission is particularly interested in comments on how the potential complexity and expense of any compensation mechanism, including the administrative costs and the costs to consumers, should affect the cost/benefit analysis of whether to prescribe compensation at all.

10. The rules proposed in the Notice are related to those proposed in Policies and Rules Concerning Operator Service Providers: Further Notice of Proposed Rule Making, CC Docket No. 90-313, 56 FR 402, 6 FCC Rcd 120 (1990). Accordingly, the rules set out in the Appendix to the Notice and this summary are numbered in sequence with the rules proposed in CC Docket No. 90-313, although the latter rules have not yet been adopted.

11. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission has determined that the proposals or options contained in the NPRM concerning the unblocking of 10XXX access, equipment modification, the establishment of the 800 or 950 access methods, and payphone compensation may have some impact on small entities. Public comment is requested on the initial regulatory flexibility analysis set out in the full NPRM.

12. This notice and comment rule making proceeding is non-restricted. Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), contains provisions governing permissible *ex parte* contacts.

Ordering Clauses

13. Accordingly, *It is Ordered*, pursuant to sections 1, 4(i), 4(j), 201-205, 216, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 216, 226, 303(r), that a notice of proposed rule making is issued, proposing the amendment of 47 CFR parts 64 and 68 as set forth in the appendix.

14. *It is further ordered*, pursuant to §§ 1.415 and 1.419 of the Commission's

Rules, 47 CFR 1.415, 1.419, that all interested parties may file comments on the matters discussed in the Notice and on the proposed rules contained in the appendix by April 5, 1991 and reply comments by April 19, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 230) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

15. *It is Further ordered* That the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

16. *It is Further ordered* The the Secretary shall cause a copy of the Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1981). The Secretary shall also cause a summary of the Notice to appear in the Federal Register.

List of Subjects

47 CFR Part 64

Communications common carriers, Telephone.

47 CFR Part 68

Communications common carriers, Communications equipment, Telephone. Federal Communications Commission. Donna R. Searcy, Secretary.

Proposed Rules

It is proposed that parts 64 and 68 of title 47 of the Code of Federal Regulations be amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a)-(b) [Revised]

(c) Each aggregator shall ensure, by the earliest applicable date, that any of its equipment presubscribed to a provider of operator services allows the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services as set forth in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section.

(1) All equipment that is technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and that is technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall immediately allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(2) All equipment or software that is manufactured or imported on or after April 17, 1992, and installed by any aggregator shall, immediately upon installation by the aggregator, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(3) Each pay telephone shall, within twelve (12) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(4) All equipment not included in paragraphs (c)(1), (c)(2), or (c)(3) of this section shall, within thirty-six (36) months of the effective date of this paragraph or upon replacement, whichever is sooner, allow the consumer to use equal access to obtain access to the consumer's desired provider of operator services.

(5) This paragraph does not apply to the use of equal access code dialing sequences that result in billing to the originating telephone.

(d) All providers of operator services must establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. §§ 154, 201, 202, 203, 204, 205, 208, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is added to read as follows:

§ 68.318 Additional limitations.**(a)–(d) [Reserved]**

(e) *Requirement that existing registered equipment allow access to common carriers.*

(1) Any pay telephones used by call aggregators shall, within twelve (12) months of the effective date of this paragraph:

(i) Be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes; and

(ii)(A) Be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and

(B) Be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes.

(2) Any equipment used by call aggregators that is not provided for in paragraph (e)(1) of this section shall, within thirty-six (36) months of the effective date of this paragraph:

(i) Be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes; and

(ii)(A) Be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and

(B) Be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes.

(3) Equipment described in paragraphs (e)(1) and (e)(2) of this section shall be modified as necessary and re-registered if required by § 68.214. Any software modifications required to achieve compliance with this paragraph shall be installed in a manner that cannot readily be altered by the user.

[FR Doc. 91-6118 Filed 3-14-91; 8:45 am]

BILLING CODE 5712-01-M

47 CFR Part 73

[Docket No. 91-52, RM-7373]

Radio Broadcasting Services; Macclenny and Williston, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WJXR, Inc., licensee of Station WJXR(FM), Channel 221A, Macclenny, Florida, seeking the substitution of Channel 221C3 for Channel 221A at Macclenny, and modification of its license to specify the higher class channel. The proposal to upgrade at Macclenny requires the substitution of Channel 267A for Channel 221A at Williston, Florida, and modification of Station WFEZ(FM)'s license to specify Channel 267A. We are also issuing an Order to Show Cause to Gulf to Bay Broadcasting Corporation Inc., licensee of Station WFEZ(FM), Williston, Florida. The coordinates for Channel 221C3 at Macclenny are North Latitude 30-17-54 and West Longitude 82-00-55. The coordinates for Channel 267A at Williston are North Latitude 29-25-04 and West Longitude 82-32-58.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Frederick A. Polner, Richard K. Olson, Jr., Rothman, Gordon, Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, PA 15219 (Attorneys for WJXR, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-52, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6119 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-51, RM-7625]

Radio Broadcasting Services; Steeleville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Steeleville Communications proposing the allotment of Channel 248A at Steeleville, Illinois, as the community's first local FM service. Channel 248A can be allotted to Steeleville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4 miles) west of the community, in order to avoid a short-spacing to Station WFRX(FM), Channel 249A, Frankfort, Illinois. The coordinates for this proposed allotment are North Latitude 38-01-18 and West Longitude 89-43-47.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Philip M Baker, 4701 Willard Avenue, Washington, DC 20815 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-51, adopted February 28, 1991, and released March 11, 1991. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6120 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-54, RM-7623]

Radio Broadcasting Services; Herington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Marie and Donald D. Willis proposing the substitution of Channel 289C3 for Channel 289A at Herington, Kansas, and modification of the construction permit for Station KDMM to specify the higher class channel. The coordinates for Channel 289C3 are 38-38-30 and 97-02-30.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Marie Willis, and Donald D. Willis, 115 North 8th Street, Herington, Kansas 67449, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-54, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6121 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-535; RM-7520]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for filing comments in response to a Public Notice dated February 15, 1991, accepting a counterproposal filed by Hardin County Broadcasting Company, Inc., filed in this proceeding. The deadline for filing comments was established as March 6, 1991. This deadline is extended as

requested by Daily News Broadcasting Company because the office of its engineering counsel, Silliman and Silliman, was devastated by a fire on February 23, 1991. Documents relevant to this case were destroyed and are in the process of being replaced. This action is taken to provide Daily with time to replace the documents that were destroyed in the fire.

DATES: Comments are now due on March 13, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutman, Attorney, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Counsel to Daily News Broadcasting Co.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6248 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-53, RM-7591]

Radio Broadcasting Services; Bronson, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Spring Arbor College Communications proposing the allotment of FM Channel *234A to Bronson, Michigan, and its reservation for noncommercial educational use. The coordinates are 41-46-41 and 85-16-32. Since Bronson is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: E. Harold Munn, Jr., President, Spring Arbor College

Communications, 100 Airport Drive, Coldwater, Michigan 49036, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-53, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6122 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-55, RM-7624]

Radio Broadcasting Services; Missoula, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Smith Broadcasting Inc., proposing the substitution of Channel 261C1 for Channel 261C3 at Missoula, Montana, and modification of the construction permit for Station KZOQ-FM to specify the new channel. Canadian concurrence will be requested for this allotment at coordinate 46-48-08 and 113-58-20.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeff M. Smith, President, Smith Broadcasting, Inc., 2300 Regent St., P.O. Box 2277, Missoula Montana 59801, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-55, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6123 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-56, RM-7350]

Radio Broadcasting Services; Karnes City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Karnes Broadcasting Company requesting the allotment of Channel 276C2 to Karnes City, Texas, as that community's first local FM service. Proposed coordinates of Channel 276C2 at Karnes are 28-56-14, and 97-53-12, with a site restriction of 5.9 kilometers (3.7 miles) north to avoid a short-spacing to Channel 275C2, Alice, Texas. Since Karnes City, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Robert S. Eckols, d/b/a/ Karnes Broadcasting Company, Route 1, Box 148, Kenedy, Texas 78119.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-56, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6124 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-34; Notice 10]

RIN 2127-AC19

Motor Vehicle Safety Standards; School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes revisions to Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*. The proposal seeks to enhance the objectivity and applicability of school bus joint strength requirements and test procedures. It would clarify and expand procedures for testing the strength of school bus body joints, revise the existing exemption from Standard No. 221 provided for maintenance access panels on school bus bodies, and extend the scope of Standard No. 221 to include all school buses, including those with a GVWR of 10,000 pounds or less. Today's proposal also requests comment on whether the existing joint strength requirement, which is based upon the relative strength of the joined panels, should be revised in favor of a specified minimum strength requirement for school bus body joints.

DATES: Comments in response to this notice must be received by May 14, 1991. The changes proposed in this notice would take effect 18 months after any final rule is published.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Cooke, Crashworthiness Division, NRM-12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4928.

SUPPLEMENTARY INFORMATION: In 1974, Congress enacted amendments (Pub. L. 93-492) to the National Traffic and Motor Vehicle Safety Act of 1966, which, among other things, directed NHTSA to issue safety standards applicable to vehicles transporting school children to or from school or related events. As amended by the 1974 amendments, section 102 of the Vehicle Safety Act required the agency to establish standards for a number of aspects of performance, including interior protection for occupants, floor strength, and the crashworthiness of the school bus body and frame. One of the safety standards which the agency issued in response to that requirement was Standard No. 221, *School Bus Body Joint Strength*. Standard No. 221 was designed to strengthen school buses so that body panels would not separate at their joints and either become cutting edges that could seriously injure occupants during a crash or permit their ejection through openings created by the separation.

Although implementation of Standard No. 221 substantially reduced the previous safety problem of body panels becoming easily detached in crashes, the agency became concerned that manufacturers were circumventing the standard in some cases by excessive designation of panels as maintenance access panels. As noted in the summary above, maintenance access panels are exempted from the joint strength requirements of Standard No. 221. To address this concern, the agency published a notice of proposed rulemaking (NPRM) at 49 FR 57939 (November 27, 1981), which proposed to remove the exemption for all maintenance access panels except for a few that were considered critical for proper maintenance.

After considering available information, including comments from the public, school bus manufacturers, and school bus purchasers, the agency eventually terminated the rulemaking proceeding. 49 FR 27181 (July 2, 1984). The termination was based on the lack of evidence that maintenance access panel separations during school bus crashes were creating a safety problem, and the lack of evidence that manufacturers were abusing the maintenance panel exemption provision by unnecessarily designating panels as maintenance panels. It was also based on the possibility that requiring maintenance panels to comply with the Standard would make maintenance more difficult and, that once such panels were removed, they might be put back in place using a minimum number of fasteners, thus potentially creating a

greater safety problem. At that time, the agency was not aware of adequate data which indicated that the failure of a maintenance access panel during a crash had actually caused a personal injury.

Since terminating that rulemaking action, the agency has been reassessing the issue in light of additional information and events. First, the agency obtained documentation of separated maintenance access panels in actual crashes with evidence of injuries caused by the separated panels. Second, NHTSA also obtained evidence that certain panels on some buses were initially manufactured to comply with the joint strength requirements, but were designated as maintenance access panels on subsequently manufactured buses and were not in compliance with those requirements. Third, at least four manufacturers are known to claim that all the panels comprising the interior rear wall of their buses are maintenance access panels. And fourth, in 1986, the National Transportation Safety Board (NTSB) issued recommendations (H-86-54 through 56) suggesting that the agency eliminate the maintenance access panel exemption, as well as take other actions to improve school bus safety. These recommendations were based on the NTSB's investigation of a number of serious school bus crashes.

In June 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM) on school bus body joint strength issues (52 FR 23315; June 19, 1987). That notice requested comments on issues concerning the exemption of maintenance access panels from Standard No. 221, revisions to test procedures under that Standard, and the need for a minimum integrity requirement for school bus floors. The agency received responses from 37 commenters, including school bus manufacturers, school bus operators, and various Federal, state and local governmental entities. All comments were carefully evaluated and considered in developing this proposal.

Today's proposal would revise the requirements of Standard No. 221 addressing maintenance access panels, school bus body joint strength requirements and procedures for testing body joint specimens. It would also clarify that the requirements of the Standard are applicable to floor joints. The agency has completed a series of dynamic tests of school bus floor joints, and has placed them in the docket.

1. Applicability

The existing Standard is limited in its application to school buses with a

GVWR of more than 10,000 pounds. NHTSA tentatively concludes that it is appropriate to extend the Standard to cover all school buses. Investigations by the National Transportation Safety Board (NTSB) of crashes involving school buses with a GVWR of 10,000 pounds or less have indicated that joint separation has occurred in some of the investigated accidents. In addition, the other safety standards specifically directed at school buses, FMVSS No. 220; *School bus rollover protection*, and No. 222; *School bus passenger seating and crash protection* are applicable to all school buses. In view of the apparent safety need, today's proposal would revise S3 to extend Standard No. 221 to cover all school buses.

II. Maintenance Access Panel Exclusion

The existing Standard, at S5, sets out the joint strength requirements for school bus body panel joints. Existing S4 excludes maintenance access panels, spaces designed for ventilation or other functional purposes, doors and windows from the definition of "body panel joint," and therefore from the Standard's joint strength requirements. The existing rule does not contain a definition for "maintenance access panel." As noted above, at least four manufacturers claim that the rear interior walls of their buses are exempt from Standard No. 221 by virtue of their being constituted entirely of maintenance access panels.

NHTSA initially decided to exclude maintenance access panels from the requirements of Standard No. 221 because the agency recognized the need to have a limited exception to the Standard for body panels which needed to be removed on a regular basis in order to provide access to mechanical or electrical components which require periodic maintenance. However, NHTSA tentatively concludes that the existing provision, as implemented, compromises the safety and structural integrity of school buses. Investigations by the NTSB of crashes involving large school buses built following the promulgation of Standard No. 221 have shown that exempted access panel joints have separated during crashes and caused passenger injuries, and that this has occurred in instances where non-exempt joints did not separate.

The current blanket exclusion of maintenance access panels has resulted in extensive and excessive designations of panels as maintenance access panels in the bus interior rear and side wall areas above the window line, generally based on the ostensible need to provide access to wires or harnesses. It is these panels that are the primary subject of today's proposal to restrict the

designation of panels as excluded maintenance access panels and thereby to reduce occupant exposure to separated joints and the associated risk of injury in school bus crashes.

The proposal would retain a limited exclusion from the joint strength requirement for necessary maintenance access panels. It would accomplish this by providing a specific definition for the term "maintenance access panel," and by specifying the circumstances in which maintenance access panels would be required to comply with the joint strength requirement of S5. In addition, the definition of "body panel joint" would be revised to clarify those portions of the vehicle that are subject to the Standard. The proposal would retain the exclusion from the joint strength requirement for those access panels which legitimately control access to components that must be serviced on a routine basis and which must meet a new size limit. However, it would terminate the exclusion of panels which simply cover expanses of wires, harnesses or tubing which do not need routine maintenance. In addition, the proposal would require that trim and decorative parts, and body frames into which doors and windows are mounted comply with S5. As discussed below, under the proposal, all panels subject to S5 would also be subject to the revised test procedures under S6.

At S4, the proposal would define "maintenance access panel" as a body panel whose moving or removing is necessary for routine maintenance of a serviceable component which is recommended by the chassis or body manufacturer to be performed at intervals of one year or less. The proposal would also add a definition of "serviceable component" to S4. This term would be defined as a part of the bus which is explicitly identified by the bus body or chassis manufacturer in the owner's or service manuals as requiring routine maintenance at least once each year. NHTSA intends for these definitions to provide for continued exclusion of those panels that are necessary to provide access to components that require maintenance annually or more frequently, and which must be removed on a regular basis. However, the definitions would exclude any body panel that provides access only to segments of tubing, wiring, or harnesses that do not include connections. The agency believes that such segments do not require service or maintenance frequently enough to have the panels that conceal them be considered maintenance panels. These definitions are intended to ensure that

panels would be considered "maintenance panels," and thus potentially excluded from the joint strength requirement, only when they require legitimate access for routine maintenance.

The proposal would extensively revise S5. Proposed S5.1 and S5.2, which contain the basic joint strength requirement, are discussed in today's notice under Part III of this preamble. Proposed S5.3 would require that certain maintenance access panels must meet the attachment requirement of S5.1 and the joint strength requirement of S5.2. Proposed S5.4 specifies the maintenance access panels which must meet that requirement. Proposed S5.4(a) would require compliance with S5 for all maintenance access panels which, when opened or removed, expose the bus interior to areas below the floor, to the engine compartment, or to compartments adjoining the engine compartment. Because these panels serve to isolate the bus interior from areas where fire is most likely to occur and are an integral part of the vehicle's barrier against passenger compartment fires, NHTSA believes these panels should be required to comply with the joint strength requirement.

Proposed S5.4(b) would require that maintenance access panels in the passenger compartment seating area not covered by S5.4(a), but which provide access to serviceable components or connections to tubing, wiring or harnesses, meet either the S5 requirement, or comply with certain size restrictions for maintenance access panels. The effect of S5.4(b) would be to require that passenger compartment maintenance access panels either comply with the S5 joint strength standard, or be no larger than required to provide access to the serviceable components in question. If adopted, it would serve to reduce passenger exposure to separated joints while not unduly impeding needed maintenance and repair procedures.

Proposed S5.4(b) would set the criterion, based upon the size of the maintenance access panel in relation to the component or components for which it provides access, which must be met if the panel is not otherwise exempted from S5 and does not meet the joint strength requirement of S5. It would provide for a two-inch access margin around the periphery of serviceable components or clusters of components for handling and tool clearance during installation, replacement, inspection and adjustment procedures. The average spacing between components within a cluster of components covered by a

single panel could not exceed four inches. NHTSA believes these provisions would ensure adequate access to serviceable components while minimizing the incentive for manufacturers to scatter components so as to create large, unnecessary access panels.

The intended effect of these proposed changes would be to continue to exempt certain maintenance access panels such as exterior and forward interior panels which are out of the zone of likely passenger contact, from the joint strength requirement. Other maintenance access panels would be required to comply with the S5 joint strength requirement if they open the floor or the firewall, are likely to come in contact with passengers during a crash because they are within the passenger compartment, or exceed the proposed size limits. The proposal would not necessarily limit the number of maintenance access panels provided by a manufacturer or specifically ordered by a customer, although it could require that steps be taken to improve joint retention on additional or unnecessary panels.

Today's proposal would eliminate the existing exclusion provided in S4 for spaces designed for ventilation. NHTSA believes this exclusion is currently not utilized, and serves no useful purpose. The agency specifically invites comment on this deletion.

As noted above, the termination of the previous NPRM on maintenance access panels was based in part on the possibility that requiring the panels to comply with the standard would make maintenance more difficult. This current proposal, by its combination of inclusions and exclusions, addresses that possibility. For example, it continues to exempt maintenance access panels that meet certain size criteria, those on the exterior of the bus, and those in front of the forward-most point of the windshield mount. It includes in the definition of maintenance access panel removeable body panels covering components that only need maintenance infrequently, and excessively large access panels. This judicious revision to the maintenance access panel exemption is also intended to make it more likely that all panel fasteners will be replaced following maintenance than did the earlier NPRM.

III. Requirements and Test Procedures for Body Joints

The requirements and procedures for testing school bus body joint strength contained at existing S6 have been the subject of considerable criticism for

their alleged restricted applicability, and their alleged lack of sufficient specificity, particularly with regard to specimen preparation. The existing procedures have been criticized as being vague when applied to the testing of certain types of joints, such as curved joints and door and window frame joints. It has been argued that many of these joints cannot be accurately or properly tested in accordance with the existing procedures.

The ANPRM solicited comments on these issues, and a number of responses were received. These comments have been carefully considered in developing today's proposal. The proposed revisions are intended to enhance the clarity, applicability and uniformity of joint strength testing requirements and testing procedures.

A. Discussion of Relative versus Minimum Strength Requirements

Among the comments received in response to the ANPRM were several relating to the appropriateness and efficacy of the existing requirement at S5 that school bus body joints be able to withstand a force equivalent to 60 percent of the tensile strength of the weaker of the joined components. These comments suggested that NHTSA consider replacing the existing relative strength requirement with an absolute minimum strength requirement.

NHTSA has tentatively determined that, if practicable, the standard should be amended to incorporate minimum absolute strength requirements. The agency recognizes that the safety need for students to be protected against body panel separation should not vary according to the strength of material with which a particular bus is constructed. These requirements would ensure that all new school buses would afford at least the same minimum protection against the risk of body panel separation. However, the agency seeks additional information to aid it in selecting the specific level or levels to assign to particular types of body joints. The agency is therefore specifically requesting comments from interested persons on the establishment of minimum absolute strength requirements.

Thomas Built Buses recommended in its comments in response to the ANPRM that the minimum required joint strength for interior body panels be fixed at 60 percent of the strength of 22 gauge steel, with a minimum tensile strength of 45,000 psi, as corrected for fastener metal removal requirements. Thomas recommended that for exterior panels, the requirement should be based on 20 gauge steel. The commenter suggested

that this recommendation would eliminate the perceived shortcoming of Standard No. 221 with regard to allowing paper or wooden joints. It would also be in line with most state school bus body specifications, and with the recommendation calling for the use of "prime commercial quality steel" in body construction called for in the 1985 National Minimum Standards for School Buses.

The State of Connecticut proposed that a minimum force per unit length of joint could be specified based upon present materials used in school buses that performed favorably relative to poorly performing school buses in similar crashes studied by the NTSB.

The National Association of State Directors of Pupil Transportation Services suggested that Standard No. 221 would more adequately meet the need for safety and objectivity if the joint strength requirements were 60 percent of the tensile strength of 18 gauge steel for exterior panels and 20 gauge steel for interior panels regardless of what panel materials are used.

Ford Motor Company suggested that NHTSA consider including minimum strength requirements as an optional alternative to the existing requirement in the joint strength test. Ford also suggested that the minimum value should be determined so as to allow for incorporation of standard types of joints using current state-of-the-art technology. The commenter felt that an optional minimum strength requirement should maintain safety performance and allow for expanded product offerings previously not provided because of the anomalous nature of the existing requirements.

The agency specifically solicits comments on the appropriate absolute minimum strength requirements, and on the above specific suggestions. Responses to the following questions are also sought and should be organized in the same manner as the questions are presented:

(1) Comparing a minimum strength requirement, including the above suggestions, to the relative joint strength criterion on Standard No. 221, which is most effective and appropriate? Why? What would be the effect upon manufacturers? Upon vehicle costs?

(2) To what extent should the minimum strength vary with bus size, bus type, and individual panel joints in various body regions?

B. Discussion of Proposed Revisions to Testing Procedures

The proposal would add a new provision at S5.1 which would specify

that no body panel shall have an unattached segment longer than 8 inches. In addition to setting a minimum interval between joint fasteners, this provision would complement the existing general requirement that joint specimens used for testing purposes be 8 inches long where possible.

Proposed S6.1.1 contains general procedures applicable to the testing of all types of joint specimens. It would clarify that joint specimens are to be tested for tensile force only in the major plane of the panel, along the centerline of the specimen. This would be illustrated in a revised Figure 1 in the Standard. This provision would also set out the requirements for making specimen side cuts. It would require that the side cuts be made so that the centerline of the specimen is perpendicular to the joint. It would also clarify that the specimen is to be cut so that its length includes portions of the body panels on opposite sides of the joint. The dimensions in Figure 1 would be revised to eliminate the "hourglass" shape specified by existing Figure 1. NHTSA tentatively concludes that this shape specification is not necessary. In addition, the cutting and resulting vibration which occurs when shaping the specimen to conform with the hourglass shape may weaken the joint in some cases, particularly in specimens where the joint includes adhesives.

The proposal, at S6.1.2, addresses cutting specimens from joints 8 inches or longer. The words "randomly selected," contained in existing S6.1.1, would be deleted to clarify that the joint strength requirement is intended to apply to each possible test segment along each regulated joint.

Proposed S6.1.3 clarifies the requirements at existing S6.1.2 for specimen preparation where the joint specimen is less than eight inches long and contains no discrete fasteners. These joints would be tested by using the entire joint length.

Joints containing discrete fasteners (e.g., bolts, screws, rivets or welds) are addressed in proposed S6.1.4, which sets out expanded requirements for specimen preparation. At S6.1.4(a), it would retain the existing requirement found at S6.1.1, that specimen side cuts may not pass through a discrete fastener. In order to ensure uniformity of specimens, proposed S6.1.4(b) would require that each specimen side cut be located equidistant between fasteners where the fasteners are uniformly spaced along the joint. Where fasteners are not uniformly spaced, the proposal would require that side cuts be made such that the distance between a cut and the nearest enclosed fastener is one-half of the average

distance between successive fasteners located along the joint. The proposal would also require that in either case, the end cut must leave an edge between the cut and the nearest enclosed fastener of at least $1\frac{1}{2}$ times the diameter of the fastener hole or spot weld. These provisions would help to ensure uniformity and objectivity during the preparation and testing of these joint specimens.

New S6.1.4(c) would allow the 8-inch joint segment length to be adjusted to between 4 and 8 inches in order to conform to the requirements of proposed S6.1.4 (a) and (b). The proposal would also add a new S6.1.5, designed to facilitate specimen preparation and testing where the joint is curved, as is often found in ceiling or roof joints. The procedures would allow testing of these joints where the radius of curvature is at least 20 inches. These joints are typically untestable under the existing procedures. The proposal would allow the specimen lengths provided in Figure 1 to be extended to the size of the joined parts or the testing machine capacity when testing these types of joints. This would serve to reduce the effect of the specimen's curvature on the test results. The agency requests comment on the appropriateness of the 20 inch minimum value for radius of curvature and whether it should be reduced to permit testing of more joint specimens.

The proposal at S6.1.6 clarifies that support members (e.g., rub rails) which contribute to the strength of a joint are to remain attached to a joint specimen during testing. This provision is intended to ensure that the joint is tested in a manner that accurately reflects its actual strength as installed in the vehicle. The proposal would, however, allow the removal of material from support members as necessary to clear the gripping areas of the joint members being tested.

Proposed S6.1.7 would address preparation of specimens taken from door and window frames, or from panels with body corner frames. As discussed above, the existing procedures have been criticized because such a large number of body joints are untestable. Among the most problematic have been door and window frame joints. The proposal intends to clarify specimen preparation procedures for these types of joints to ensure that they can be tested in accordance with the Standard. The proposal would allow specimens taken from these joints to be attached to fittings that would adapt the specimen to the testing machine so that tensile loads are properly applied and distributed.

Notwithstanding the agency's tentative determination that a minimum absolute strength requirement should be adopted, NHTSA is also soliciting comments on the alternative of revising the procedures for measuring the relative strength of body panel joints. The proposal would revise existing S6.2 to clarify that it refers to the determination of the tensile strength of joined body panels, and that this determination excludes support members, although support members are to remain attached to the joint during testing. As proposed at S6.1.6, NHTSA intends to include the effect of these support members in determining the tensile strength of the joint itself. Proposed S6.2(a) would update the existing provision to refer to the 1989 edition of the American Society for Testing and Materials (ASTM) Annual Book of ASTM Standards as a source for minimum tensile strength. The existing rule requires that the ASTM figures be used if specified in the Annual Book. The proposal would require the use of the ASTM value if it exists. If the ASTM value does not exist, the proposal requires the use of the material properties test set out at S6.2(b). The proposal would also delete existing S6.1.3, which requires that joint specimens be prepared in accordance with the ASTM Annual Book of Standards, because the ASTM procedures are not applicable to the preparation of joint strength test specimens.

Existing S6.2(b) would be revised for clarity by specifying that where the tensile strength of joined components is not being taken from the ASTM Annual Book, a material properties specimen should be cut in accordance with ASTM E8, Figure 1, and tested in accordance with the strength test procedures, which would remain at S6.3. In order to further ensure uniformity and objectivity in these test procedures, the existing provision would also be revised to include instructions on how to calculate the specimen's tensile strength.

The proposal would create a new S6.2(c) to provide specific instructions on how to calculate the tensile strength of each joined component based upon the data developed in accordance with S6.2 (a) or (b). It would also provide that in making this calculation, the total area of the material removed for installation of fasteners (e.g., holes drilled for rivets or screws) may not be subtracted from the figure for the component's area. This provision would clarify the agency's previous interpretation of S6.2 to eliminate any ambiguity in the requirement that removed material may

not be subtracted from the component area when determining its tensile strength.

New S6.2(d) would simply provide that 60 percent of the tensile strength of the weaker component of the joint is used as the minimum allowable test criterion.

The proposal would also make several minor revisions to the strength test procedures contained in S6.3. Specifically, the reference to ASTM standards in S6.3.1 would be deleted, and S6.3.2 would be revised to delete the reference to "approximately perpendicular." That term would be replaced by a requirement that the joint be in stress at 90 degrees plus or minus 3 degrees from the joint centerline, as shown in the revised Figure 1. Finally, S6.3.3 would be clarified to provide that, during the test, the separation of the joint is the relevant event, not the separation of a support member. These revisions to S6.3 are intended merely to clarify the existing procedures in order to reduce ambiguity and ensure uniformity in the strength test procedures, making them applicable to a wider variety of circumstances.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments

received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Impacts

NHTSA has analyzed the potential impacts of this proposed rule and tentatively determined that the proposal, if adopted, would not be "major" under Executive Order 12291. However, the agency has tentatively determined that, if adopted, this proposal would be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This determination is based upon two considerations: The Congressional and public interest in school bus safety; and the potential economic impacts that could result if the agency decides to promulgate an absolute minimum body joint strength standard to replace the existing relative minimum strength standard.

As discussed in further detail in the Preliminary Regulatory Evaluation, NHTSA is unable to quantify the safety benefits that would accrue from this rulemaking. However, NHTSA shares the public's special concern for the safety of school children, and tentatively concludes that safety benefits would be obtained through the reduced potential for fatalities and injuries as a result of adoption of the proposed rule. The agency specifically invites comments on the costs and benefits of this proposal.

As shown in Table 1 below, the total consumer cost per year for this rulemaking is estimated to be in the range of \$4.99 million to \$8.14 million.

Assuming a five year tool life, the incremental cost to the consumer to eliminate/redesign MAP's on large and small school buses, and to upgrade small school buses to conform with FMVSS 221 would be in the range of \$120-\$345 per school bus. This is shown in Table 1. Compared to the cost of a new school bus (\$25,000-\$60,000), this incremental cost increase is negligible and will not affect school bus sales or the ability of small entities to purchase

school buses. For example, compared to the retail price of 66 passenger school bus (\$40,000), the proposed improvements to Standard No. 221 would be less than one percent of the purchase price.

TABLE 1.—FMVSS NO. 221 NPRM CONSUMER COSTS

| | Total annual consumer cost (million) | Consumer cost per school bus |
|--|--------------------------------------|------------------------------|
| Eliminate/redesign MAPs for Large School Buses..... | \$3.78-6.93 | \$120-220 |
| Eliminate/redesign MAPs and Improve Small School Bus Body Joint Strength.. | \$1.21 | \$345 |
| Est. Total Consumer Cost Range..... | \$4.99-\$8.14 | |

NHTSA has also analyzed the effects of this proposed rule on small entities, in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule, if adopted, would not significantly affect the manufacturing process of any school bus body manufacturers that are small entities or the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant effect on the environment.

After analyzing the rule in accordance with the principles and criteria set forth in Executive Order 12612, NHTSA has determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.221 Standard No. 221; School bus body joint strength [Amended].

2. S3 of Standard No. 221 would be revised to read as follows:

S3 *Application.* This standard applies to school buses.

3. The definitions of "Body panel joint" and "Bus body" in S4 of Standard No. 221 would be revised to read as follows:

S4. Definitions. * * *

Body panel joint means the area of contact or close proximity between the edges of a body panel, including floor body panels, and another body component, including but not limited to: Other body panels, maintenance access panels required to comply with S5, trim and decorative parts, body frames into which doors and windows are mounted, body panels made of composite material such as plywood where occupant space is enclosed only by such material, and excluding: Maintenance access panels which are excluded from S5 in accordance with S5.4, support members such as rub rails which are entirely outside of body panels, doors and windows, and body panels made of composite materials such as plywood which are supported by other panels that comply with S5.

Bus body means all body panels of a bus that enclose the bus occupant space, including the floor and firewall (that body panel separating the engine compartment from the occupant space) and excluding the bumpers and chassis frame.

4. Definitions of "Maintenance access panel" and "Serviceable component" would be added to S4 of Standard No. 221 as follows:

S4. Definitions. * * *

Maintenance access panel means a body panel which must be moved or removed to provide access to one or more serviceable components.

Serviceable component means any part of the bus, of either a mechanical or electrical nature, which is explicitly identified by the bus chassis and/or body manufacturer in the Owner's Manual or factory Service Manual as requiring routine maintenance actions at intervals of one year or less. Tubing, wires and harnesses are considered to be serviceable components only at their attachments.

5. S5 of Standard No. 221 would be revised by adding the following provisions S5.1 through S5.4 to read as follows:

S5. Requirements.

S5.1 No body panel joint shall have an unattached segment longer than 8 inches.

S5.2 When tested in accordance with the procedure of S6., each body panel

joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60% of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

S5.3 When tested in the same manner as a body panel joint in accordance with the procedure of S6., each maintenance access panel joint specified in S5.4(a) or (b) shall meet the requirements of S5.1 and S5.2

S5.4 The requirement of S5.3 applies to:

(a) Each maintenance access panel which, when opened or removed, exposes the bus interior to areas located below the bus floor or within the engine compartment, or to compartments adjoining the engine compartment.

(b) Each interior maintenance access panel—

(1) Which lies rearward of a vertical transverse plane that is 30 inches in front of the foremost passenger seating reference point as defined by § 571.222 (Standard No. 222; *School bus passenger seating and crash protection*), and

(2)(i) Which, in the case of a maintenance access panel under which there is a single serviceable component, either the length or the width, or, where applicable, the diameter, of the opening covered by that maintenance access panel exceeds by more than four inches the corresponding dimension(s) of the serviceable component covered by the maintenance access panel when projected on the plane of the opening at an angle perpendicular to that plane.

(ii) Which, in the case of a maintenance access panel under which there are two or more serviceable components:

(A) The average spacing between each component and the nearest component to it exceeds four inches when projected upon the plane of the opening at an angle perpendicular to that plane; or

(B) Either the length or the width, or, where applicable, the diameter, of the opening covered by that maintenance access panel exceeds by more than four inches the corresponding overall outer dimension(s) of the cluster of components covered by the maintenance access panel when projected on the plane of the opening at an angle perpendicular to that plane.

6. S6 of Standard No. 221 would be revised to read as follows:

S6. Procedure.

S6.1 *Preparation of the test specimen.*

S6.1.1 The test specimen is prepared for the application of tensile forces which are centered along the specimen centerline as shown in Figure 1, in the

major plane (the largest panel surface adjacent to the joint) of the joined floor or other body panel(s), with the joint and panel(s) configured as installed in the vehicle, except for modifications permitted by S6.1.4, S6.1.5 and S6.1.7. The specimen side cuts are made so that the specimen centerline is perpendicular to the joint at the midpoint of the joint segment. The specimen length is cut so as to include portions of the body panels on opposite sides of the joint consistent with the dimensions specified in Figure 1 to the extent permitted by the size of the joined parts.

S6.1.2 If a body panel joint is 8 inches long or longer, a test specimen is cut that consists of any 8 inch segment of the joint. If the specimen contains discrete fasteners, it is also prepared in accordance with S6.1.4.

S6.1.3 If a joint is less than 8 inches long with no discrete fasteners, a test specimen is cut so as to include the entire joint length.

S6.1.4 Where a joint is fastened by a type of discrete fastener (such as bolt, screw, rivet, spot weld or intermittent seam or bead weld shorter than 8 inches), the joint test segment is selected so that—

(a) The side cuts do not cut or contact a discrete fastener.

(b) Each side cut bisects the distance between successive fasteners where the fasteners are spaced uniformly along the joint, or provides a distance from the cut to the nearest enclosed fastener that is one-half of the average spacing between the fasteners located along the joint where the spacing of those fasteners is not uniform. In either case, the side cut is at a distance from the center of the nearest enclosed fastener hole or spot weld that is at least 1.5 times the diameter of the fastener hole or weld.

(c) The 8 inch specimen required by S6.1.2 is reduced in size if necessary to comply with S6.1.4 (a) and (b), except that a specimen so reduced is not less than 4 inches in width.

S6.1.5 Where a joint is curved, such as a transverse ceiling or roof joint, the specimen is prepared by selecting a joint segment where the radius of curvature is at least 20 inches, and cutting a minimum allowable joint segment length in accordance with S6.1.2 or S6.1.3. The specimen lengths provided in Figure 1 may be extended to the size of the joined parts, or to the capacity of the testing machine.

S6.1.6 Support members which contribute to the strength of a body panel joint, such as rub rails on the outside of body panels or underlying structure attached to joint members remain attached to a test specimen from

that joint, except that material may be removed from the support members as necessary to clear the gripping areas of the joint members being tested.

S6.1.7 Where a specimen is taken from joints of body panels with body frames into which doors or windows are mounted, or from joints between body panels and body corner frames, the specimen may be attached to fittings which adapt the frame part of such joint specimens to the head of the tensile testing machine. The fitting and its attachments are designed to apply the tensile force along the centerline of the specimen in the plane of the interface between the joined members and to distribute that force uniformly to the frame portion of the joint, without contributing to the strength of the joint being tested.

S6.2 The tensile strength of each joined body component is determined independently of any attached support members. The tensile strength of each joined body component, and the minimum allowable test strength of each joint is determined as follows:

(a) If the mechanical properties of a joint component material are specified

by the American Society for Testing and Materials (ASTM) in the 1989 Annual Book of ASTM Standards, the minimum tensile strength per unit of area from that source may be used in the determination required by (c), below.

(b) In all other cases, the tensile strength of the component is determined by cutting a sheet specimen from that component outside of the joint region in accordance with Figure 1 of E 8-89 Standard Test Methods of Tension Testing of Metallic Materials, in Volume 03.01 of the 1989 Annual Book of ASTM Standards, and by testing it in accordance with S6.3. The specimen's tensile test strength is divided by its pre-test cross-sectional area at the middle of the reduced section specified in Figure 2 to determine its tensile strength per unit area.

(c) The tensile strength for each joined component is determined by multiplying its tensile strength per unit area, as determined from (a) or (b) above, by its cross-sectional area. This area is the component's thickness multiplied by the overall length of its joint segment (see Figure 1), and it includes the total area

of material removed to facilitate the installation of fasteners.

(d) The weaker component of each joint, as determined from (c) above is identified, and its tensile strength is multiplied by 0.6 to determine the strength requirement applicable to the joint under S5.

S6.3 Strength test.

S6.3.1 The joint specimen is gripped on opposite sides of the joint in a tension testing machine.

S6.3.2 The testing machine grips are adjusted so that the joint, under load, will be in stress at 90 degrees plus or minus 3 degrees from the joint centerline, as shown in Figure 1.

S6.3.3 A tensile force is applied to the specimen by separating the heads of the testing machine at any uniform rate not less than $\frac{1}{8}$ inch and not more than $\frac{3}{8}$ inch per minute until the specimen separates at a point on the centerline of the joint.

7. Figure 1 at the end of the text in § 571.221 would be revised to appear as follows:

BILLING CODE 4910-59-M

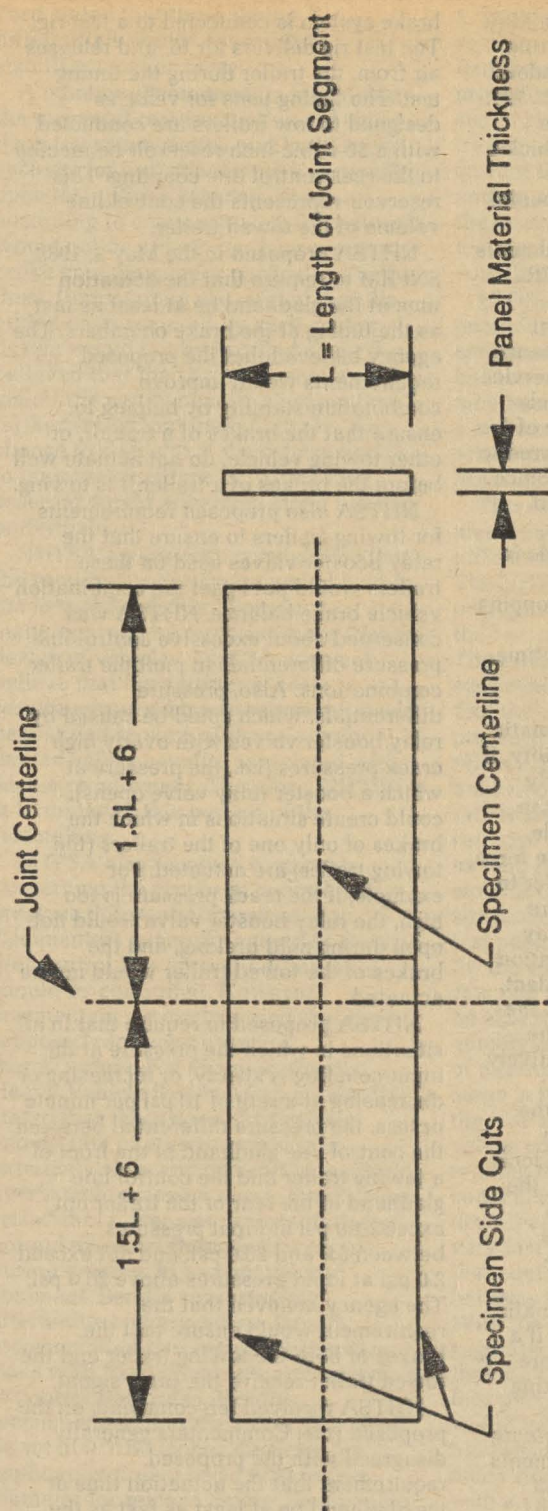


Figure 1

Size of Lap Joint Tensile Test Specimen
All Dimensions in Inches

Issued on March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6167 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 85-07; Notice 6]

RIN 2127-AD27

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On May 3, 1989, NHTSA published a final rule to amend the pneumatic timing requirements of Standard No. 121, *Air Brake Systems*, to improve the brake timing balance of combination vehicles. At the same time, the agency published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing two further amendments concerning pneumatic timing. First, NHTSA proposed to require for towing vehicles that actuation at the interface (gladhand) between towing vehicles and trailers be at least as fast as actuation at the towing vehicle brake chambers. Second, the agency proposed control line pressure differential requirements for towing trailers to ensure that the relay booster valves used on these trailers do not upset the combination vehicle brake balance. After reviewing comments on that SNPRM, NHTSA is proposing different requirements concerning control line pressure differential. In addition, NHTSA is terminating the part of the rulemaking concerning gladhand timing.

DATES: Comments must be received on or before April 29, 1991. The amendments proposed in this notice would become effective one year after the publication of a final rule.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202-366-5274).

SUPPLEMENTARY INFORMATION: On May 3, 1989, NHTSA published a final rule making several amendments to Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to improve the timing balance of combination vehicles (54 FR 13890). On that same day, NHTSA also published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing further amendments concerning pneumatic timing (54 FR 18912).

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of brake torque, and therefore braking force, is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

For combination vehicles, pneumatic application timing can affect stability. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn, this force may reduce the stability of the combination and contribute to a jackknife accident.

"Pneumatic release timing" (i.e., the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control) also affects braking performance. If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle in this situation, immediate release of the brakes is necessary.

For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems*, currently specifies certain requirements for pneumatic timing. Section S5.3.3 specifies time periods within which brake actuation (application) for trucks, buses, and trailers must occur. Similarly, section S5.3.4 specifies time periods within which brake release for these vehicles must occur.

The timing tests for trailers, including trailer converter dollies, are not conducted with the trailer connected to an actual tractor. Instead, the trailer's

brake system is connected to a test rig. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the rear control line coupling. This reservoir represents the control line volume of the towed trailer.

NHTSA proposed in the May 3, 1989 SNPRM to require that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. The agency believed that the proposed requirements would improve combination stability by helping to ensure that the brakes of a tractor, or other towing vehicle, do not actuate well before the brakes of a trailer it is towing.

NHTSA also proposed requirements for towing trailers to ensure that the relay booster valves used on these trailers would not upset the combination vehicle brake balance. NHTSA was concerned about excessive control line pressure differentials in multiple trailer combinations. Also, pressure differentials, which could be caused by relay booster valves with overly high crack pressures (i.e., the pressure at which a booster relay valve opens), could create situations in which the brakes of only one of the trailers (the towing trailer) are actuated. For example, if the crack pressure is too high, the relay booster valve would not open during mild braking, and the brakes of the towed trailer would not be actuated.

NHTSA proposed to require that in all situations in which the pressure at the input coupling is steady, or increasing or decreasing at a rate of 10 psi per minute or less, the pressure differential between the control line gladhand at the front of a towing trailer and the control line gladhand at the rear of the trailer not exceed 1.0 psi at input pressures between 5.0 and 20.0 psi, and not exceed 2.0 psi at input pressures above 20.0 psi. The agency believed that the requirement would ensure that the brakes of both the towing trailer and the towed trailer receive the same signal.

NHTSA received ten comments on the proposed rule. Commenters generally disagreed with the proposed requirement that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. Ford Motor Company (Ford) commented that it conducted tests to estimate the impact of the proposed requirement on a variety of truck configurations and options. The tests indicated that timing differentials between the gladhand and towing vehicle's chambers were 0.03 to 0.101 seconds, or an average of 0.066 seconds.

Ford stated that these timing differentials would not result in significant trailer surge.

A number of commenters stated that the proposed requirement would cause them to custom design and build brake systems for individual trucks, depending upon the options selected. Thus, according to commenters, manufacturers would not be able to produce common brake components for particular truck lines. Commenters also stated that the added costs required by such custom design would not be justified since they believed that the improvements would yield little safety benefit. Commenters further stated that manufacturers may choose to slow down the tractor brakes to improve simultaneity, which they asserted would adversely affect braking performance.

NHTSA agrees with commenters that the proposed requirement would lead to the loss of flexibility in product manufacturing by requiring more custom design of vehicles. NHTSA does not believe that the additional costs resulting from such a requirement would be justified in view of the relatively limited safety benefits associated with such a requirement. Therefore, NHTSA is terminating this portion of the rulemaking.

NHTSA also received comments concerning the proposed control line pressure differential requirements. Commenters generally agreed in theory that control line pressure differential should be controlled. However, commenters generally stated that the proposed requirements were inappropriate. For example, Bendix Heavy Vehicle Systems Group (Bendix) stated that the proposed 10 psi per minute rate of pressure change is extremely slow and difficult to maintain over a wide pressure range. Bendix also stated that it was not representative of normal pressure changes that occur during braking. In a supplemental comment, Bendix suggested an alternative test procedure. Bendix recommended two specific test orifice sizes with fixed diameters and thickness to control flow rates. Bendix recommended that the test orifice sizes be set at 0.0180 inches diameter for application timing and 0.0292 inches diameter for release timing. Bendix also indicated that these diameters would produce brake pressure rates that are in line with lower limit applications, such as those required for maintaining vehicle speed on a five percent grade. Bendix recommended four psi per second for application and release testing. This is substantially faster than the rate proposed by NHTSA in the May

3, 1989 SNPRM, but closer to the rates seen in actual service applications. Bendix also suggested that the testing procedure for determining the control signal pressure differential on towing trailers and dollies utilize either of the current Standard No. 121 trailer test rigs and an orifice fixture, coupled between the control line gladhand of the trailer test rig and the control line input coupling of the vehicle to be tested.

NHTSA believes that the test procedure suggested by Bendix has certain merit. However, NHTSA believes that the suggested procedure may be overly complex and may require a more substantive test fixture than is otherwise necessary to evaluate pressure differentials.

Therefore, NHTSA is proposing a modified version of the pressure differential test suggested by Bendix. The NHTSA proposed test would have only a metering orifice, the smaller of the two orifices suggested by Bendix. The rationale for having two orifices as suggested by Bendix, instead of one, is that the use of two results in the same pressure change rate for both apply and release. However, NHTSA does not believe that the same pressure change rate is necessary. The actual pressure rate rise or decay is not that important as long as it is not very fast or very slow. If the pressure rate rise is very slow, commenters were concerned that test personnel would waste time waiting for the event to occur. If the pressure rate rise is very fast, persons would not be able to read the instrumentation quickly enough to ascertain the amount of differential. Further, if the pressure surge is too large from a very fast rate, the loss of normal hysteresis in the valves could allow a crack pressure reading that may be in error. NHTSA concludes that use of one orifice as described in this notice would avoid the very fast or very slow pressure rate rises that could be problematic. Thus, NHTSA believes that only one orifice is needed. With the smaller of the two orifices suggested by Bendix, NHTSA believes that the apply rate would approximate four psi per second, but the release rate would be somewhat slower. NHTSA believes that this would allow use of a much simpler test apparatus, a thin disc with a very small hole in it. NHTSA believes that this metering disc could be installed in a fitting with a gladhand at each end that could be quickly inserted between the minitractor and the vehicle after the timing test is completed.

The proposed pressure differential test slowly "sweeps" the pressure across the full range of operating pressures. This enables a person

conducting the test to check differential level. The function of the orifice specified in the proposal is to restrict the flow from the trailer test rig and slow the pressure rise and decay rate. The ability to "sweep" the pressure slowly eliminates the need to stop and hold the pressure constant. If the pressure is changed too rapidly, the steady state case (i.e., when brake pressure is being held steady after application of the brakes) is not evaluated and pressure differentials caused by air flow through the control lines, instead of valve characteristics, are introduced.

NHTSA tentatively concludes that the proposed requirement concerning control line pressure differential is necessary to meet the need for motor vehicle safety. NHTSA believes that some trailer manufacturers may install relay valves at the rear of the trailers in the control lines upstream of the towing gladhands to "boost" the control signal. Manufacturers might do this to provide a significant margin of compliance with the new brake timing requirements for towing trailers established by NHTSA in the May 3, 1989 final rule.

While booster valves greatly improve timing (i.e., a transient condition where brake pressure is being increased or decreased), they can, if not properly designed, introduce pressure differentials in the brake system after the brakes are applied and pressure is being held steady (i.e., at steady state). Although such steady state pressure differentials may be only a few psi, they can produce significant brake unbalance among the axles in typical brake applications in which control line pressures are usually less than 20 psi. Brake unbalance results in uneven brake wear and can lead to premature brake fade and loss of effectiveness during grade descents. With lightly loaded trailers, it can also lead to premature wheel lockup and loss of stability. The total effect of these differentials with dollies and trailers can result in brakes on the rearmost axles not applying at all during typical low pressure applications. The problem is most acute when the dollies and trailers are both equipped with booster valves.

One commenter, the American Trucking Associations, suggested that NHTSA require permanent marking of pressure relay booster valves to indicate their crack pressure. NHTSA is not proposing such a requirement as part of this rulemaking. However, NHTSA is beginning work which could lead to a proposed rule to require the marking of air valves to indicate their crack pressure. NHTSA has been following the work of the Society of Automotive

Engineers (SAE) in this area. The SAE Task Force on Truck Brake Supply and Control Components Subcommittee has developed three Recommended Practices. A brief summary of each appears below.

- J 1589—Recommended Practice for Determining Air Brake Valve Input-Output Characteristics. This Recommended Practice is a test procedure which is used for determining the physical operating characteristics of the various valve types. It covers such areas as crack pressure, input-output differential, and hysteresis. This Recommended Practice has been approved by SAE and is in effect.

- J 1860—Recommended Practice for Labeling Air Brake Valves with their Performance (Input-Output) Characteristics. This Recommended Practice would explain how to label each basic valve type with a letter code and a three digit number code for crack pressure.

- J 1861—Recommended Practice for Air Brake Valve Input/Output Characteristic Requirements. This Recommended Practice would establish tolerances of plus or minus 25 percent for nominal values of crack pressure and pressure differential.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed above, the proposed requirements would necessitate only minor additional changes to vehicles beyond those required by the final rule published on May 3, 1989. Manufacturers may have to use higher quality (tighter tolerance) relay valves to meet the proposed requirements. However, these tighter tolerance valves are not significantly more expensive. In addition, the proposed requirements could add approximately five minutes to the timing test, which could increase the cost as much as four dollars per vehicle. NHTSA believes that most, if not all, manufacturers routinely test each vehicle for compliance with pneumatic requirements. NHTSA estimates additional costs associated with this proposed rule, if promulgated, would be less than the May 3, 1989 final rule, which was neither major nor significant. The final regulatory evaluation for that final rule is available in the docket for that rulemaking.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I

certify that the amendments would not have a significant economic impact on a substantial number of small entities. The effect of this proposal, if adopted, on any small manufacturers of vehicles or brake systems would be minor. Only minor additional changes to vehicles beyond those necessitated by the final rule published on May 3, 1989 would be needed. Other small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. The proposed amendments would not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purposes of the National Environmental Policy Act. NHTSA has determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, NHTSA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date

will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S5.3.5 would be added to § 571.121 to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

S5.3.5 *Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.*

(a) For a trailer manufactured on or after [date to be inserted would be one year after publication of the final rule] and designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a) (1) and (2) under the conditions specified in S5.3.5(b) (1) through (4)—

(1) 1 p.s.i. at all input pressures between 5 p.s.i. and 20 p.s.i.; and
(2) 2 p.s.i. at all input pressures above 20 p.s.i.

(b) The requirements in S5.3.5(a) shall be met—

(1) When the pressure at the input coupling is steady, increasing or decreasing.

(2) When air is applied to or released from the control line input coupling

using the trailer test rig shown in Figure 1.

(3) With a fixed orifice consisting of a 0.0180 inch diameter hole (no. 77 drill bit) in a 0.032 inch thick disc installed in the control line between the trailer test rig coupling and the vehicle's control line input coupling.

(4) The trailer test rig is operated in the same manner and under the same conditions as it is operated during testing to measure brake actuation and release times, as specified in S5.3.3 and S5.3.4, except for the installation of the orifice in the control line to restrict air flow rate.

* * * * *

Issued on March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6165 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-21: Notice No. 2]

RIN 2127-AC88

Bus Window Retention and Release: Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, NHTSA is proposing to amend Federal Motor Vehicle Safety Standard No. 217, Bus Window Retention and Release, by revising the minimum requirements for emergency exits and improving access to emergency doors on school buses. Instead of requiring all school buses with a GVWR greater than 10,000 pounds to have the same number of exits, as the standard currently does, the proposal would set requirements for minimum emergency exit space based upon the seating capacity of the bus. Thus, larger school buses would be required to have an increased number of exits. The proposal would also require school buses to provide improved access to side emergency doors. In addition, it would propose requirements to improve the visibility of school bus emergency exits.

Today's proposal follows NHTSA's publication of an advance notice of proposed rulemaking (ANPRM) to amend Standard No. 217 at 53 FR 44623 (November 4, 1988). The ANPRM explored whether an increase in the number of emergency exits would improve the likelihood of occupant survival in a serious crash, and requested responses to a number of questions concerning the costs and

operational aspects of additional exits, and on any negative effects of the amendments (such as reductions in structural integrity of the body or seating capacity). Today's proposal is based in large part upon the responses received by NHTSA from the ANPRM.

DATES: Comment closing date is April 29, 1991. The proposed effective date would be eighteen months after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC, 20590. Docket Room hours are 9:30 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Gauthier, NRM-10, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, O.C. 20590. Telephone: (202) 366-4799.

SUPPLEMENTARY INFORMATION: An important factor in minimizing post-crash injuries and deaths on buses is the speed and ease with which occupants can evacuate the vehicle in an emergency. When Standard No. 217, Bus Window Retention and Release originally became effective on September 1, 1973, it required that buses other than school buses have exits whose combined area, in square inches, equaled or exceeded 67 times the number of designated seating positions. The type of exit used to comply with this requirement was left to the choice of the manufacturer, although the agency assumed that most manufacturers would meet the standard primarily by installing push-out side windows.

School buses were excluded from this requirement for the reasons explained in the notice of proposed rulemaking:

In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional. 35 FR 13025; August 15, 1970.

The Standard did require that when a school bus was voluntarily equipped with push out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the Motor Vehicle and Schoolbus Amendments of 1974 (Pub. L. 93-492), Standard 217 was amended to include emergency exit requirements for

school buses. Instead of simply specifying that the total combined area in square inches of all the exits had to equal or exceed 67 times the number of designated seating positions, and leaving the choice of exit type to the manufacturer, the agency required (and continues to require) that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard, in this instance specifying the fewest permissible number of emergency exits for a school bus.

In May 1988, 27 persons died, apparently of smoke inhalation, in the fire resulting from the high-speed crash of a pick-up truck (driven by a drunk driver) and a used school bus in Carrollton, Kentucky. Several factors were involved in this tragic event, which represented the first fire-related occupant deaths on a school bus-type vehicle since NHTSA began compiling statistics on traffic fatalities in 1975. Some observers suggested that more occupants might have survived the fire if the bus had been equipped with additional (or more accessible) emergency exits. That bus had been manufactured in March 1977, shortly before the new NHTSA school bus safety standards took effect, including upgraded requirements for Standard 217. This crash focused considerable public interest on several school bus safety issues, including emergency exits, as well as on the continuing problem of drunk driving. More recently, attention was again focused on school bus exits by the September 1989 crash in Alton, Texas, in which a truck struck a school bus, which then rolled into a gravel pit, and 21 students drowned.

Following the Carrollton crash, NHTSA undertook a comprehensive review of its vehicle standards and other programs for school bus safety, and published a summary report in November 1988. That report noted the excellent overall safety record of school buses, but also highlighted areas where further improvements might be made. The National Academy of Sciences (NAS) reached similar conclusions in its report on school bus safety, issued in May 1989.

In November 1988, NHTSA issued an ANPRM on whether to upgrade Standard No. 217 to specifically enhance school bus emergency egress. 53 FR 44627 (November 4, 1988). The notice

explored whether rulemaking to require additional emergency exits is warranted. It posed a series of 24 questions divided into six categories: Safety need, requirements for additional exits, the effect of additional exits on other aspects of safety, cost of additional exits, encouraging the correct use of emergency exits, and other factors incident to requiring more emergency exits. NHTSA received 49 comments in response to the ANPRM. The commenters included Federal, State and local government agencies, local school districts, pupil transportation services and associations, bus and equipment manufacturers and the general public. NHTSA has carefully considered all of the comments received in developing today's proposed rule addressing the need for additional emergency exits on new school buses to facilitate improved egress from a bus following a crash.

After considering the responses to the November 1988 ANPRM, NHTSA has tentatively concluded that there are reasonable improvements that can be made to school bus emergency exit requirements which would improve the speed and safety of school bus emergency evacuations and reduce the risk of another bus tragedy similar to the Kentucky crash. Further, the agency tentatively concludes that the proposal is practicable. Ten States currently have school bus emergency exit requirements which go beyond the minimum requirements of Standard No. 217. Several of these States require additional door and/or roof exits, while others require push-out window exits, either alone or in conjunction with additional door or roof exits. At least one other State is considering adopting similar requirements. Most, if not all, school bus manufacturers already offer additional door and roof exits as optional equipment, and NHTSA is aware that at least one manufacturer offers a flip-up seat as an option to improve exit access.

Although several States have requirements for school bus emergency exits which exceed the Federal requirements in Standard No. 217, additional Federal action to improve school bus exits appears warranted. Vehicle safety standards are an area in which States have traditionally looked to the Federal government for leadership. This is particularly true with respect to school bus safety. NHTSA has a long-established role in this area, issuing safety standards as well as other measures, such as the voluntary guidelines contained in Highway Safety Program Standard 17. In addition, the

increasing profusion of differing additional State school bus standards has the potential to be costly and confusing for bus manufacturers. While States would, of course, remain free to impose additional requirements not inconsistent with Federal law for school bus emergency exits, today's proposal would bring the Federal requirements up to a level comparable to, or exceeding, the standards of many of those States that now impose additional requirements.

Additionally, the National Traffic and Motor Vehicle Safety Act enables States to set vehicle safety requirements more stringent than the Federal standards only for vehicles procured for the State's own use. Although States may thus impose school bus exit requirements which exceed Federal requirements upon public school buses, they may not impose the additional requirements upon private school buses. The proposed rule would reduce the disparate safety requirements of public and private school buses in those States that have exit requirements that exceed the current Federal standards. Finally, NHTSA notes that the useful life of school buses often extends beyond the time that the buses are used for pupil transportation, e.g., they are sometimes subsequently used by church groups and community service organizations. In contrast to State school bus regulatory authorities, which are generally focused on local considerations and pupil transportation issues, NHTSA has a much broader perspective on bus safety issues. Thus, the agency's increased involvement also appears justified for this reason.

Proposed Revisions

Emergency Exit Requirements

1. *Summary of existing requirements.* Standard No. 217, at §5.2.3.1, specifies minimum requirements for emergency exits on school buses. School buses must have either a rear emergency door, or one emergency door on the rear half of the left side of the vehicle and a push-out rear window which creates an opening not less than 16 inches high and 48 inches wide. Generally, manufacturers of front-engine buses have chosen the first option, and manufacturers of rear-engine buses have selected the second approach. The current requirements regarding the number and type of exits are applicable to all school buses, regardless of size or passenger capacity. This is in contrast to the emergency exit requirements for non-school buses found at §5.2 of the Standard.

Non-school buses are required to provide unobstructed emergency exit openings which collectively total, in square inches, at least 67 times the number of designated seating positions on the bus. Thus, as the number of seating positions increases, so must the number of exits. At least 40 percent of the total area required must be provided on each side of the bus. Further, no single emergency exit may be credited with more than 536 square inches of the total area required. Non-school buses, with a GVWR exceeding 10,000 pounds are required to provide a rear exit, unless the configuration of the bus (such as rear engine design) precludes such an exit. In that case, the bus must have a roof exit in the rear half of the passenger compartment. Non-school buses may also satisfy the unobstructed openings requirement by providing one side door for each 3 seating positions in the vehicle. Non-school buses generally utilize large push-out windows to provide a large portion of the required side exit area.

II. *Proposed changes.* As stated above, NHTSA has always recognized the differences in use and circumstances between school buses and other buses. It is because of concerns about tampering and discipline, along with the risk of children falling out of push out windows during operation of the bus, that the agency originally excluded school buses from the occupant capacity-based emergency exit requirements applicable to other buses. NHTSA's review of Standard 217 in light of the Carrollton, Kentucky, crash suggests that school bus safety might be enhanced and emergency egress improved by increasing the available exits and improving access to those exits.

This conclusion is supported by the NTSB's March, 1989 report on the Kentucky crash. The NTSB recommended that Standard No. 217 be revised to require that school bus egress be based upon vehicle capacity, and that the requirements be no lower than those currently required for non-school buses. The NAS, in its May, 1989 report on improving school bus safety, made a similar recommendation. Further, numerous comments were received in response to the ANPRM supporting an approach which would base the number of required exits upon the seating capacity of the bus.

This notice proposes to extend to school buses a requirement similar to the existing requirement for non-school buses regarding the amount of emergency exit space. The proposal would require that school buses provide

emergency exit spaces equal in square inches to 67 times the number of seating positions. However, the results of the formula discussed below, which would be used to determine the number of additional emergency exits needed, would be rounded up or down as appropriate. Thus, although emergency exit space would be tied to seating capacity under the proposal, the minimum exit requirements for a particular type and size of bus might be slightly more or less than 67 times, in square inches, the number of designated seating positions.

This "capacity-based" method of determining the minimum amount of emergency exit space would be the same for both school buses and non-school buses, thereby providing both types of buses with the same amount of emergency exit area. In this regard, the emergency egress requirements for school and non-school buses are deemed to be equivalent.

The proposal would not require school buses to comply with certain related requirements applicable to non-school buses, i.e., the requirements that 40 percent of the required area be provided on each side of the bus, and that no single opening be credited with more than 536 square inches of space.

NHTSA tentatively concludes that these provisions are not appropriate for school buses for several reasons. As a general matter, NHTSA does not seek to require school bus manufacturers to rely on push-out windows to meet the revised standard. The agency believes that push-out windows are of limited usefulness in evacuating school buses since those windows are usually higher off the ground and smaller in size than exit doors, which makes them difficult for school age occupants to use.

Moreover, as numerous commenters pointed out, push-out windows are almost never used as a means of escape during school bus evacuation drills, increasing the likelihood, particularly for smaller children, that the windows will not be used in an actual emergency. Since school buses are often built on a truck chassis, a push-out window in an upright school bus creates an opening that is typically as much as six to seven feet above the ground. School bus evacuation studies have shown that young children in particular are reluctant to use such a means of escape. This is in contrast to the usual circumstances on non-school buses, where there are likely to be a considerable number of adults on board who could assist children in safely exiting through window exits. Finally, as several commenters point out, push-out

windows are likely targets for tampering, which would be more prevalent in school than non-school buses.

Since the agency does not seek to encourage the increased use of push-out windows, the effect of extending the 40 percent and 536 square inch maximum credit requirements to school buses would be to increase significantly the number of required side exit doors. As an example, a 90 passenger bus would require eight additional side door exits. In addition to imposing significant expenses, a large number of additional side door exits could compromise the structural integrity of the bus. Second, unlike non-school buses, the vast majority of school buses are required by S5.2.3.1 and S5.4.2.1 of Standard 217 to have a rear exit door opening that measures at least 24 inches by 45 inches, or 1080 square inches, or a side emergency door measuring at least 24 inches by 45 inches and a rear push-out window measuring 16 inches by 48 inches for a total area of 1848 square inches of emergency exit space. There does not appear to be any basis for not allowing at least the minimum space required to be provided by these doors and push-out window to be counted in the exit space calculation.

After considering these factors and the comments received, NHTSA believes additional emergency exit doors and roof exits are the most effective means to increase emergency egress for school children from school buses.

NHTSA recognizes the potential safety benefits of roof-mounted emergency exits, particularly in the case of rollovers where the bus comes to rest on its side. Data compiled by NHTSA show that rollovers constitute less than 0.5 percent of school bus crashes, but that during the period 1980-1988, an average of 22 percent of school bus occupant fatalities occurred in rollovers. In addition to providing an additional means of exit in a rollover if the bus does not come to rest on its roof, roof exits may also serve as a potential exit route in other circumstances where one or more exit routes have been rendered inoperative.

NHTSA tentatively concludes that if a bus is required to have only one additional exit under today's proposal, that exit should be a side exit emergency door. The agency also tentatively concludes that, in such a case, roof exits should not be permitted in lieu of a conventional exit door for purposes of calculating available exit space. The agency notes that the single additional door exit would, in most

cases, be located on the left-hand side of the bus. That additional door would be available in crashes such as rear impacts and rollovers, which can render inoperative one or more of the exits currently required.

However, NHTSA is exploring the use of roof exits by school bus manufacturers, especially those that manufacture large school buses, i.e., those with a passenger capacity of 67 or more. Accordingly, the agency is today proposing two alternative options for school buses which would be required under this rulemaking to have two or more additional exits. NHTSA requests comment on whether the final rule should adopt one of the proposed options to the exclusion of the other, or whether it should include both options, thus enabling a manufacturer to elect the option with which a particular bus will comply.

The proposed options would revise S5.2.3 through S5.2.3.3. Under either option, the total number of exits required for a bus would be determined by the following equations.

For school buses with rear exit doors, NHTSA is proposing that the following formula be used to determine the required number of additional emergency exits (AEE):

$$AEE = [(TA - FSDA) / MRDEA] - 1$$

Where:

TA (total area) = 67 × number of designated seating positions

FSDA (front service door area) = 26 in. × 77 in. = 2,002 in.²

MRDEA (minimum rear door exit area) = 24 in. × 45 in. = 1,080 in.²

For school buses with a left side exit door and push-out rear window, the proposal would use the following formula to determine the AEE:

$$AEE = [(TA - FSDA - POWA) / MSDEA] - 1$$

Where:

TA (total area) = 67 × number of designated seating positions

FSDA (front service door area) = 26 in. × 77 in. = 2,002 in.²

POWA (push-out window area) = 16 in. × 48 in. = 768 in.²

MSDEA (minimum side door exit area) = 24 in. × 45 in. = 1,080 in.²

In the above equations, the FSDA is based upon an average service door area, and the MRDEA, MSDEA and POWA are based upon current minimum requirements contained in Standard No. 217. Table 1 shows the number of exits that would be required under proposed options A and B, based upon the number of designated seating positions and the configuration of existing exits.

TABLE 1.—ADDITIONAL EMERGENCY EXITS

[AEE]

| Designated seating position | Re- quired area | Option A | | Option B | | | |
|-----------------------------|-----------------------|--------------------------|---------|----------------------------------|-----------------|---------|-----------------|
| | | Additional side doors | | Additional side doors/roof exits | | | |
| | | If rear | If side | If rear | Roof exit(s) | If side | Roof exit(s) |
| 24..... | 1608 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 30..... | 2010 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 36..... | 2412 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 42..... | 2814 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 48..... | 3216 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 54..... | 3618 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 55..... | 3685 | 1.0 | 0.0 | 1.0 | 0.0 | 0.0 | 0.0 |
| 56..... | 3752 | 1.0 | 0.0 | 1.0 | 0.0 | 0.0 | 0.0 |
| 58..... | 3886 | 1.0 | 0.0 | 1.0 | 0.0 | 0.0 | 0.0 |
| 60..... | 4020 | 1.0 | 0.0 | 1.0 | 0.0 | 0.0 | 0.0 |
| 65..... | 4355 | 1.0 | 0.0 | 1.0 | 0.0 | 0.0 | 0.0 |
| 66..... | 4422 | 1.0 | 1.0 | 1.0 | 0.0 | 1.0 | 0.0 |
| 67..... | 4489 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 0.0 |
| 68..... | 4556 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 0.0 |
| 69..... | 4623 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 0.0 |
| 70..... | 4690 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 0.0 |
| 71..... | 4757 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 72..... | 4824 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 73..... | 4891 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 74..... | 4958 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 75..... | 5025 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 76..... | 5092 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 77..... | 5159 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 0.0 |
| 78..... | 5226 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 1.0 |
| 79..... | 5293 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 1.0 |
| 80..... | 5360 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 1.0 |
| 81..... | 5427 | 2.0 | 1.0 | 1.0 | 2.0 | 1.0 | 1.0 |
| 82..... | 5494 | 2.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| 83..... | 5561 | 2.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| 84..... | 5628 | 2.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| 85..... | 5695 | 2.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| 86..... | 5762 | 2.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| 87..... | 5829 | 3.0 | 2.0 | 2.0 | 2.0 | 1.0 | 2.0 |
| 88..... | 5896 | 3.0 | 2.0 | 2.0 | 2.0 | 1.0 | 2.0 |
| 89..... | 5963 | 3.0 | 2.0 | 2.0 | 2.0 | 1.0 | 2.0 |
| 90..... | 6030 | 3.0 | 2.0 | 2.0 | 2.0 | 1.0 | 2.0 |

Option A would provide that all additional exits required under the proposal be side exit doors. For example, an 84 passenger bus with an existing side door exit and a rear window exit would require two additional side door exits for a total of three emergency side door exits. An 84 passenger bus with an existing rear emergency door would also be required to have two additional side door exits. A 90 passenger bus equipped with a rear emergency door would be required to have three side emergency exit doors. A 90 passenger bus equipped with a push-out rear window and one side emergency exit door would need two additional side exit doors in order to comply with the proposal.

Option B would require likewise, that where one additional exit is required, it must be a side exit emergency door, but that where the additional exit space required exceeds the area created by that door (1080 square inches), the next 540 square inches of exit space must be provided by roof exit, and the next 540 square inches provided by a second roof

exit. The maximum credit for one roof exit would be 540 square inches, regardless of its actual size. If additional exit space beyond that provided by the side exit door and two roof exits is required (i.e., more than 2160 square inches of additional exit space is required), the proposal would require a second additional side exit emergency door. Under option B, an 84 passenger bus would be required to have one additional side door exit and two roof exits, regardless of whether it currently is equipped with a rear emergency door, or with a rear push-out window and a side emergency door. A 90 passenger bus equipped with a rear emergency exit would be required under option B to have two side exit doors and two roof exits. A 90 passenger bus equipped with a push-out rear window and side door exit would need one additional side exit and two roof exits to comply with option B.

In translating the emergency exit area into additional exit requirements, the figure arrived at may not be a whole number. As an example, the equation

may require 2.5 exits. Under option A, fractional figures greater than 0.500 are rounded up to the next whole number. Fractions of 0.500 or less are rounded down to the next whole number. Under option B, such fractions are rounded down if they are less than 0.300, rounded to 0.500 if they are between 0.300 and 0.500, and rounded up to the next whole number if they are greater than 0.500. Under option B, the requirement for 0.500 of a door exit may be met by a single roof exit with an area of 540 square inches.

The question of whether to require roof exits in lieu of a second additional exit door would not affect a significant number of school buses. School buses with a rear emergency door and 67 or more designated seating positions, and those buses with a push-out rear window, a side exit door and 78 or more designated seating positions would be the buses required to have more than one additional exit. School buses of these sizes represented less than 6 percent of all school buses sold in 1988, although that figure can be expected to

increase in the future. The majority of the larger buses are of rear-engine design.

The distinction between the minimum exit requirements under the proposal for front and rear-engine buses is based upon their design. Rear-engine buses are already equipped with a side exit door and a push-out rear window since their design precludes the installation of a full-size rear emergency door. Thus, they already have greater emergency exit area than a bus equipped with only a rear exit door, and do not reach the threshold under the proposal for a second additional emergency exit until the seating capacity is 78 or greater.

NHTSA requests comments about both options. With regard to Option A, NHTSA specifically requests comment on whether requiring a second or third additional exit door on these large buses would be likely to compromise the structural integrity of the vehicle. The agency has also considered whether requiring additional side exits could increase the likelihood of passenger ejections during a crash. NHTSA is aware of one case of an ejection through the glass of a side door. The agency requests comment on the likelihood of side door ejections from increased side emergency exits, and on whether additional or improved door exit mechanisms (e.g., a three-point latching mechanism with latch points at the top, bottom and side of the door), would serve to reduce the risk of ejection.

With regard to option B, the agency is

concerned about the ability of roof exits to remain operational following a rollover. According to data gathered by the agency, 47 percent of school bus rollovers involve a rotation in excess of 90 degrees. In particular, NHTSA requests comment on whether, if a bus rolls over in excess of 180 degrees, the roof exits are likely to remain operable. If not, would recessing the roof exits avoid this problem? What would be the cost to do so?

NHTSA also considered the alternative of creating additional emergency exit space by requiring buses to have a pop-out or otherwise easily removable windshield. This alternative was not proposed because of problems that could arise. The benefit from having an additional exit at the windshield could be greatly outweighed by the danger of increased passenger ejections through such a windshield. Although large buses are not required to comply with Standard No. 212; *Windshield mounting*, NHTSA does not wish to propose an alternative that could lead to a reduction in school bus windshield retention, and the potential for increased passenger ejections. Finally, many of the circumstances (such as fires) which require evacuation are likely to originate at the front of the vehicle, particularly if the vehicle has its engine in the front.

In summary, adoption of the AEE equation discussed in this portion of today's proposal would revise S5.2.3 to require that school buses have an

emergency exit area total, in square inches, of 67 times the number of seating positions on the bus. Option A would also specify that for purposes of this calculation, only entrance and emergency door exits or push-out rear windows required under the option may be counted as exits. Option B would require that buses with a rear emergency door and a capacity of 67 or greater and buses with a push-out rear window and side emergency door with a capacity of 78 or greater to meet the requirement by adding one additional side emergency door and one or two roof exits, and in some cases, a second additional side exit door. For either option, the front service door would be counted in this calculation. For the purposes of the calculation, a rear or side exit emergency door would be credited with 1080 square inches, and a rear push-out window would be credited with 768 square inches, and each required roof exit would be credited with its actual area or 540 square inches, whichever is less. The area figures for emergency doors and push-out rear windows are the minimum permitted for these exits by the existing standard.

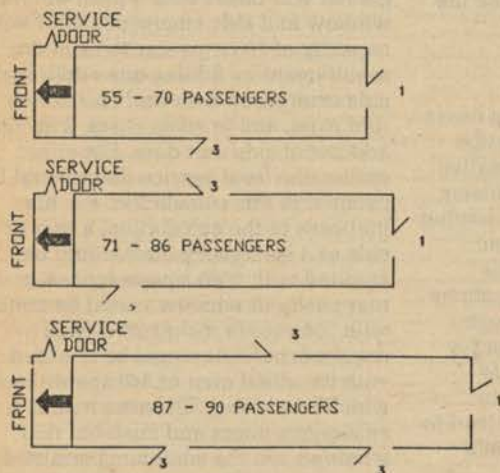
Existing S5.2.3.2, governing minimum emergency exit locations, would also be revised to specify the locations for the additional exits. The proposal includes locations for the additional exits, although NHTSA recognizes that there are a number of options regarding exit location. The following figure shows the various options for exit locations.

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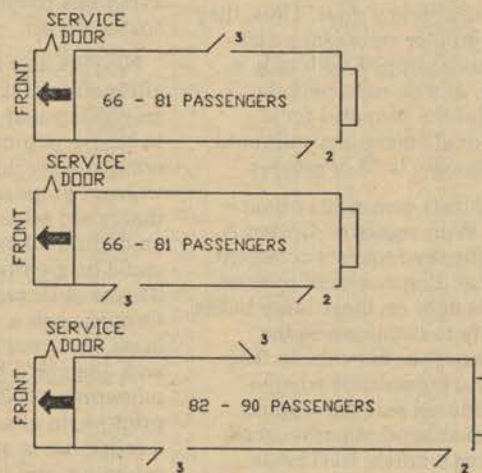
PROPOSED SCHOOL BUS EMERGENCY EXIT LOCATIONS

OPTION A

REAR DOOR BUSES

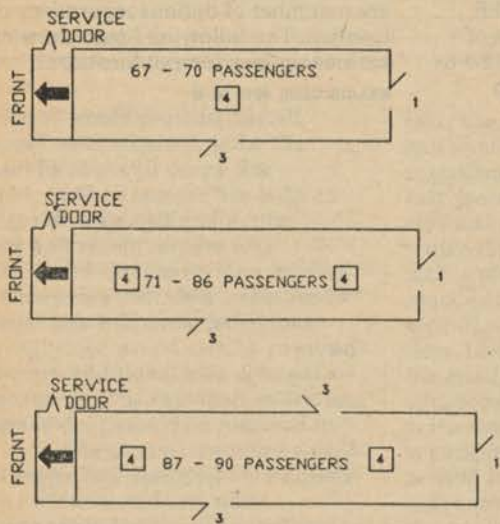


SIDE DOOR/REAR WINDOW BUSES

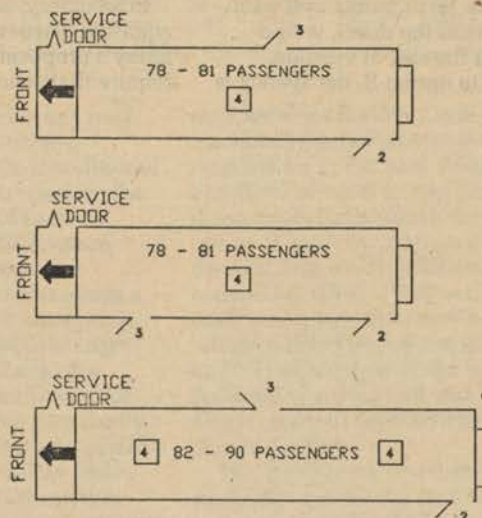


OPTION B

REAR DOOR BUSES







SIDE DOOR/REAR WINDOW BUSES



KEY

- 1 = EXISTING REAR DOOR
- 2 = EXISTING SIDE DOOR
- 3 = PROPOSED SIDE DOOR LOCATION
- 4 = PROPOSED ROOF EXIT LOCATION

- SIDE DOOR  REAR DOOR 
- REAR WINDOW  ROOF EXIT 

12/12/89

FIGURE A

NHTSA specifically requests comments on where such exits should be located. The agency is concerned that the required exits maximize emergency egress while not compromising the structural integrity of the vehicle. NHTSA's examination of NTSB school bus crash files reveals that the buses rarely remain in their lane of traffic following a crash, and that therefore, the discharge of students from the left side of the bus should not be a major consideration in determining exit location. NHTSA believes the feasible choices are as follows:

Under option A, buses with a rear door and requiring one additional exit would have a side exit door located on the left side of the bus, within the post and roof bow panel space nearest to the mid-point of the passenger compartment. A post and roof bow is one of the structural members to which the exterior sheet metal is attached. They are usually placed a few feet apart over the length of the bus. The side doors and windows are usually placed between adjacent post and roof bows. Buses with a rear door requiring two additional exits under option A would have one door on the left side, in the front third of the passenger compartment, and one door on the right side, within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

For buses required by option A to have three additional exits, the exits would be located as follows: two doors on the left side, spaced approximately equidistant from each other and the ends of the passenger compartment, and a third door on the right side within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

Under option B, a bus equipped with a rear emergency door and requiring more than one additional exit would have an additional side door exit located on the left side of the bus within the post and roof bow panel space nearest to the mid-point of the passenger compartment. If one roof exit is required, it would be located within the post and roof bow panel space nearest to mid-point of the passenger compartment. If two roof exits are needed, they would be located approximately equidistant from each other and the ends of the roof (within a tolerance of one post and roof bow panel space). If a second door is also required, it would be located in the rear third of the bus, on the right side.

The alternatives under options A and B for buses with a left rear side exit door and push-out rear window, and requiring one additional exit door are:

1. A side-exit door at the mid-point on the right side of the bus (this alternative is contained in the proposal).

2. A side-exit door on the left side, toward the front of the passenger compartment.

Under option A, for buses equipped with a left side exit and rear push-out window, and requiring two additional exits, the bus will have a door on the left side, in the front third of the passenger compartment, and a door on the right side within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

Under option B, there are two alternatives for these buses where two additional exits are required:

3. One exit would be a side door located on the right side of the bus within the post and roof bow panel space nearest to the midpoint of the passenger compartment. If one roof exit is installed, it would be located within the post and roof bow panel space nearest to the center of the roof. If two roof exits are installed, they would be equidistant from each other and the ends of the roof (within one post and roof bow panel space). This alternative is contained in the proposal.

4. One exit would be a side door located on the left side of the bus in the front third of the passenger compartment. If one roof exit is installed, it would be located within one post and roof bow panel space of the center of the roof. If two roof exits are installed, they would be equidistant from each other and the ends of the roof, within one post and roof bow panel space.

Emergency Exit Retention and Release

I. Existing standard. Existing Standard No. 217 does not address the latching mechanism for school bus emergency exit doors or roof exits.

II. Proposed revisions. Today's proposal would revise S5.3.3 (under option B only) by adding a new subsection (d) which would address release mechanism requirements for school bus roof exits. Roof exits would be required to have a forward hinge and comply with the emergency release requirements in S5.3. The agency requests comment on whether this requirement would facilitate the evacuation of school bus occupants during certain emergencies and whether current roof exit designs meet the proposed requirement. If not, what are the costs of modifying the roof exits to comply with the proposed requirements? The agency is also requesting comment on whether to require all side emergency doors to be latched by a three-point mechanism that would latch the door at

the top and bottom as well as on the side.

Emergency Exit Access

I. Existing requirements. Access to emergency exits is indirectly addressed by S5.4.2.1 of Standard No. 217, which regulates the relationship between seat backs and side exits, and by Standard No. 222, *School bus passenger seating and crash protection*, which sets forth requirements for distances between seating positions, as well as specifying mounting strength for school bus seats.

II. Proposed revisions. The Carrollton and Alton crashes showed the importance of access to emergency exits. NHTSA tentatively concludes that, to be accessible, an exit should not only be reachable from the interior, it should also not shut once opened, regardless of the orientation of the bus after a crash. More specifically, each door should be equipped with a device capable of bearing the weight of the door and of keeping the door from closing past the point that it is perpendicular to the side or rear of the bus once the door is opened to that point. Once the door is so opened, such device could be released or overridden by a means provided for that purpose. NHTSA requests comment on whether the final rule should contain such requirements.

In addition, NHTSA proposes to amend Standard No. 217 to require that it be easier for occupants to reach side emergency doors on school buses with a GVWR in excess of 10,000 pounds. Currently, a seat is permitted to be adjacent to a side door exit location. Today's proposal would improve access to the side emergency door(s) by requiring that the seat bottom of a seat adjacent to a side emergency door be designed to automatically assume and remain in a vertical position when not occupied.

NHTSA requests comment on the cost of implementing this proposal. The flip-up seat would, of course, be required to meet Standard No. 222. While the agency has not developed detailed cost data for this requirement, NHTSA believes it would improve egress and be much less costly than alternatives such as adding more exits, creating a dedicated (seatless) aisle adjacent to the side emergency doors, or improving access by increasing the center aisle width. At least one major school bus manufacturer provides a flip-up seat as an option on its buses.

Manufacturers would not be prohibited from creating a dedicated emergency exit aisle by removing the seat adjacent to a side emergency exit.

This dedicated aisle would enhance the speed with which buses can be evacuated while also minimizing the potential for passenger ejection from a side emergency door. It would result in the elimination of 2-3 seating positions adjacent to each side emergency door. In addition, it would be necessary to install a barrier as required by S5.2 of FMVSS No. 222 in front of the seat located behind the dedicated aisle.

NHTSA also requests comment on a variation to this approach, which would adopt an approach similar to that contained in existing S5.4.2.1(a) for rear emergency exits. It would create a partially dedicated aisle by requiring the unobstructed passage of a parallelepiped of the same dimensions as the exit opening 12 inches into the passenger compartment. This alternative would improve access, but it would do so by eliminating two seating positions, one next to the side door and the one immediately behind that position. Further, under FMVSS No. 222, it would be necessary to provide a barrier in front of the first seating position located next to the side of the bus and to the rear of the side door. The agency has explored the costs of these two alternatives, and believes that the costs of implementation would be considerable. The agency's analysis is contained in the preliminary regulatory evaluation.

NHTSA also requests comment on whether manufacturers should be given flexibility in setting the seat back location in relation to the emergency door opening on seats that are adjacent to the side emergency doors. A bus manufacturer has petitioned NHTSA to permit a tolerance in setting the seat back location relative to the side door front opening, and the proposal would revise S5.4.2.1 to provide this tolerance.

In considering the issue of access to emergency exit doors, NHTSA examined the question of whether center aisle width should be increased. Center aisle width, although not subject to a safety standard, is essentially governed by bus width. Unless bus bodies are increased in width, any increase in aisle width will result in a substantial reduction in passenger capacity. The maximum width allowed for a bus is 102 inches and most school buses are less than this width. An increase in aisle width without a concomitant increase in body width would translate into considerable increased costs, and perhaps a net reduction in safety as more buses would be needed to transport the same number of passengers.

Expanding aisle width from the current 12 inches to 15 inches, for

example, would result in fewer, but slightly wider seating positions, and could reduce the capacity of a 65/66 passenger bus to 55 passengers. A wider aisle would improve egress, particularly if it were necessary for passengers to crawl through the aisle, for example, to escape a fire. The agency notes that some school buses are presently manufactured with such a wider aisle and wider seats, in a configuration known as "secondary school seating." NHTSA has calculated that, assuming buses are frequently operated at or near capacity, an increase in aisle width from the current industry standard 12 inches to a 15 inch aisle width, and the accompanying reduction in seating capacity would translate into a need for 5,000 additional buses annually nationwide, at a cost of between \$175 million and \$200 million.

For these reasons, NHTSA proposes to improve access to side emergency exits by requiring a flip-up seat instead of a wider center aisle.

Emergency Exit Marking

I. Existing standard. Existing S5.5.3 sets requirements for the identification of emergency doors and their operating instructions. It does not specify any other requirements for emergency exit marking.

II. Proposed changes. Today's proposal would revise S5.5.3 to include a requirement that within two inches of each edge, the edges of each emergency exit opening be outlined with a one-inch wide band of retroreflective tape with a minimum reflective performance of 230 candelas/footcandle/sq. ft. Retroreflective tape reflects light back to its source. The agency is proposing to require tape on the interior and exterior of all required emergency door openings and roof exit openings. This requirement would aid rescuers in locating emergency exits on the outside. It is intended to help passengers, as well as rescuers, locate the exits in low-light situations. NHTSA specifically requests comment on whether interior bus lighting and/or background interior light (e.g., from streetlights or passing cars) would sufficiently illuminate the proposed interior reflectorized portions of the door and roof opening at night. NHTSA notes that some school bus interiors are not equipped with passenger compartment lights. Should school buses be required to have an interior light source that would illuminate these exits? If so, what would the costs of such a light source be? Is there a less expensive alternative that could be used to make exits more easily identifiable? Since bus riders are more likely to be familiar with exit locations

than are rescuers, should only the exterior surfaces of the exits be marked?

Retitling Standard No. 217

I. Existing standard. Standard No. 217 is currently titled *Bus window retention and release*. This title is inaccurate, as the Standard also extensively addresses requirements for emergency exits, including doors and roof exits as well as windows.

II. Proposed change. Today's proposal would rename Standard No. 217 to more accurately reflect the scope and purpose of the Standard. The new title would be *Bus emergency exits and window retention and release*.

Leadtime

The agency tentatively concludes that the proposed revisions to Standard No. 217 are practicable, as is illustrated by the current compliance of school bus manufacturers with the requirements of some States for additional emergency exits, and by the availability of flip-up seats by at least one manufacturer. NHTSA recognizes that adoption of the proposal could require some significant design changes by manufacturers to accommodate the additional exit requirements, and is therefore proposing an effective date 18 months from the publication of the final rule to provide adequate leadtime for manufacturers to implement the required changes. The agency requests comments on the question of adequate leadtime and the proposed effective date of the rule.

Impacts

Costs and Benefits

NHTSA has examined the effect of this rulemaking and determined that it is not major within the meaning of Executive Order 12291. The agency believes, however, that it is significant within the meaning of the Department of Transportation's regulatory policies and procedures because of the substantial public interest in school bus safety and emergency exits, resulting in large part from the Carrollton, KY, and Alton, TX school bus crashes. The economic effects of this rulemaking are discussed in detail in the Preliminary Regulatory Evaluation which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. The evaluation is available in the docket.

NHTSA estimates that the cost to the consumer of an emergency side door would be about \$216 per door including ignition interlock hardware, "door open" warning device, and installation labor. Including the installation labor, it is estimated that a roof exit would cost the

consumer \$234, a flip-up seat cushion \$180, and conspicuity enhancement \$12 per door and \$4 per roof exit. These are average costs. Option A would cost the consumer in the range of \$374–\$624 per bus and Option B would cost the consumer \$448–\$748 per bus. This represents a consumer cost range of \$374–\$748 per bus for the subject proposal or a total consumer cost of between \$13 million and \$26 million ($374 \times 35,000$ sales and $748 \times 35,000$ sales). This range represents the low end of Option A and the high end of Option B.

The incremental cost of implementing today's proposal would be somewhat less than these estimates indicate, because, as noted above, some States already require additional exits beyond those currently required by Standard 217. To the extent that these State requirements are consistent with the proposed revisions, there will be reduced costs in these States since manufacturers are already installing at least some of the proposed additional exits. However, the agency has only anecdotal data on the number of States that have additional requirements and the nature of those requirements. NHTSA specifically requests comments in response to the following questions from those States which have school bus emergency exit requirements that exceed the requirements of existing Standard No. 217:

1. What are the additional emergency exits required? Are the requirements applicable to all school buses in the State? If not, to what approximate percentage of buses do they apply?

2. On a per-vehicle basis, what would the approximate additional costs be for the State to comply with those requirements of the proposal which exceed the existing State requirements?

The agency cannot quantify the number of fatalities or injuries that would be reduced or avoided by the adoption of these proposed revisions to Standard No. 217. The only research on the subject that NHTSA is aware of is a study at the University of Oklahoma in 1970 which demonstrated that school bus evacuation times are directly proportional to increased exit access. In view of the Carrollton, KY and Alton, TX accidents, it is logical to believe that the proposed amendments would provide significant benefits, particularly in severe or potentially catastrophic accidents. In the agency's opinion, increased emergency exit areas would have contributed significantly to a reduction in the fatalities resulting from these accidents. Based on an analysis of worst case accident scenarios (e.g., right- or left-hand rollover, with

inoperable or blocked exit doors), the agency believes that more serious accident situations are being addressed by the subject proposal. The Preliminary Regulatory Evaluation contains further discussion on this issue.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Under that Act, the agency must evaluate the potential impact of a proposed rule on small entities, including small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rulemaking action would not have a significant economic impact on a substantial number of small entities. The small entities likely to be affected by this proposed rule, if adopted, include school bus manufacturers, dealers and distributors of school buses, and school bus purchasers, including school systems. NHTSA believes that school bus purchasers would be the group most affected by the proposed emergency exit requirements because of the likelihood of increased school bus purchase prices and the possibility of slightly increased maintenance costs. NHTSA believes the increase in school bus purchase price would not decrease school bus sales. The projected average consumer price increase of between \$374–\$748 for those buses which would be required to have additional exits is minimal (a 1% increase) compared to the approximate \$40,000 purchase price of a new school bus. Some small businesses that supply parts or components used in the manufacture and installation of emergency exits might experience a greater demand for their products, but the agency does not believe the impacts would be significant.

NHTSA believes that the majority of the 14 school bus manufacturers qualify as small businesses (less than 500 employees), as that term is defined by the Small Business Administration. However, the impact upon them from the proposed emergency exit requirements should be minor since the design changes are not complicated and the price increase is relatively small.

Environmental Effects

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant effect on the quality of the human environment.

Executive Order 12612

NHTSA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The agency recognizes that several States have emergency exit requirements for school buses which exceed the current Federal standards. The agency believes, however, that the proposal would not be inconsistent with those requirements. It would also not impede the ability of states under section 103(d) of the Vehicle Safety Act to impose requirements more stringent than those required by Federal law.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended

that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The title of Standard No. 217; *Bus window retention and release*, (49 CFR 571.217) would be revised to read as follows:

§ 571.217 Standard No. 217; *Bus emergency exits and window retention and release.*

3. Paragraph S4 of Standard No. 217 would be revised by adding the following definitions in alphabetical order:

Mid-point of the passenger compartment means any point on a vertical transverse plane bisecting a line that is parallel to the vehicle centerline and extends between the two planes which define the foremost and rearmost limits of the passenger compartment.

Passenger compartment means space within the school bus interior that is between a vertical transverse plane located 30 inches in front of the forwardmost seating reference point and a vertical transverse plane tangent to the rear interior wall of the bus at the vehicle centerline.

Post and roof bow panel space means the area between two adjacent post and roof bows.

4. Paragraphs S5.2.3. and S5.2.3.1(a) of Standard No. 217 would be revised to read as follows:

S5.2.3 *School buses*. School buses shall comply with S5.2.3.1 through S5.2.3.3.

S5.2.3.1

(a) In addition to providing unobstructed openings for emergency exit in accordance with the minimum requirements in S5.2.3.2(a)(1) or (b)(1), each school bus shall provide the number of additional emergency exits (AEE) calculated in accordance with the formula in paragraph (1) or (2), as appropriate:

(1) For a school bus with a rear exit door:

$$AEE = [(TA - FSDA)/MRDEA] - 1$$

Where:

TA (total area) = $67 \times$ number of designated seating positions;

FSDA (front door service area) = $2,002 \text{ in.}^2$, or the actual area, whichever is less; and
MRDEA (minimum rear door exit area) = $24 \text{ in.} \times 45 \text{ in.} = 1,080 \text{ in.}^2$.

(2) For a school bus with a left side exit door and a push-out rear window:

$$AEE = [(TA - FSDA - POWA)/MSDEA] - 1$$

Where:

TA (total area) = $67 \times$ number of designated seating positions;

FSDA (front service door area) = $2,002 \text{ in.}^2$, or the actual area, whichever is less;
POWA (push-out window area) = $16 \text{ in.} \times 48 \text{ in.} = 768 \text{ in.}^2$; and

MSDEA (minimum side door exit area) = $24 \text{ in.} \times 45 \text{ in.} = 1,080 \text{ in.}^2$.

5. Paragraphs S5.2.3.1(b) through S5.2.3.3 of Standard No. 217 would be revised to specify one or both of the options set forth below.

Option A. Paragraphs S5.2.3.1(b) through S5.2.3.3 would be revised to read as follows:

(b) If application of the formula specified in paragraph (a) results in a number that includes a fraction, the result shall be rounded up to the next whole number if the fraction is greater than 0.500, and rounded down to the next whole number if the fraction is equal to or less than 0.500.

S5.2.3.2 Each school bus shall be equipped with as many of the emergency exits specified in paragraph (a) or, at the option of the manufacturer, paragraph (b), as are necessary to comply with S5.2.3.1.

(a)(1) One rear emergency door that opens outward and, in the case of a bus with a GVWR of more than 10,000 pounds, is hinged on the right side.

(2)(i) If one side emergency door in addition to the emergency exit specified by S5.2.3.2(a) is necessary to comply with S5.2.3.1, it shall be located on the vehicle's left side, and the forward edge

of the door opening shall be within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side.

(ii) If two side emergency doors in addition to the emergency exit specified by S5.2.3.2(a) are necessary to comply with S5.2.3.1, one shall be located on the left side of the bus, in the front third of the passenger compartment, and the other shall be located on the right side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. Both doors shall be hinged on their forward side.

(iii) If three side emergency doors in addition to the emergency exit specified by S5.2.3.2(a) are required to comply with S5.2.3.1:

(A) Two doors shall be located on the left side of the bus, with the forward edge of each door opening located within the post and roof bow panel space that is nearest to the point equidistant between the nearest longitudinal end of the passenger compartment and the forward edge of the other door opening, and shall be hinged on their forward sides; and

(B) The third door shall be located on the right side of the bus, with the forward edge of the door opening within the one post and roof bow panel space nearest to the mid-point of the passenger compartment, and shall be hinged on its forward side.

(b)(1) One emergency door that is located on the vehicle's left side and whose forward edge is located to the rear of the mid-point of the passenger compartment and that is hinged on its forward side, and a push-out rear window that provides a minimum opening clearance 16 inches high and 48 inches wide. The window shall be releasable by operation of not more than two mechanisms which are located in the high force access region as shown in Figure 3C, and which do not have to be operated simultaneously. Release and opening of the window shall require force applications, none of which shall exceed 40 pounds, in the directions specified in S5.3.2.

(2)(i) If one side emergency door in addition to the emergency exits specified by S5.2.3.2(a) is necessary to comply with S5.2.3.1, it shall be located either on the vehicle's right side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment and be hinged on its forward side, or on the left side, in the front third of the passenger

compartment, and hinged on its forward side.

(ii) If two side emergency doors in addition to the emergency exits specified by S5.2.3.2(a) are required to comply with S5.2.3.1, one shall be located on the left side of the bus in the front third of the passenger compartment, and the other shall be located on the right side of the bus, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. Both doors shall be hinged on their forward side.

S5.2.3.3 The engine starting system of a school bus shall not operate if any emergency door exit is locked from either inside or outside the bus. For the purposes of this section, "locked" means that the release mechanism cannot be activated by a person at the door without a special device such as a key or special information such as a combination.

Option B. Paragraphs S5.2.3.1(b) through S5.2.3.3 would be revised to read as follows:

(b) For buses required by S5.2.3.2 to have roof exits, where application of the formula specified in paragraph (a) results in a number that includes a fraction, the result shall be rounded down to the next whole number if it is greater than or equal to 1.100, but less than 1.300. If the fraction is greater than or equal to 1.300, but less than or equal to 1.500, one roof exit shall be added, and if it is greater than 1.500 but less than 2.000, two roof exits shall be added. If the number is greater than 2.000, a second additional side door exit shall also be added.

S5.2.3.2 Each school bus shall be equipped with as many of the emergency exits specified in paragraph (a) or, at the option of the manufacturer, paragraph (b), as are necessary to comply with S5.2.3.1.

(a)(1) One rear emergency door that opens outward and, in the case of a bus with a GVWR of more than 10,000 pounds, is hinged on the right side.

(2) If one emergency exit in addition to the one specified by S5.2.3.2(a)(1) is necessary to comply with S5.2.3.1, it shall be a side door located on the vehicle's left side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side.

(3)(A) If one emergency exit in addition to the ones specified by S5.2.3.2(a) (1) and (2) are needed to comply with S5.2.3.1, it shall be a roof exit that meets the requirements of S5.3 through S5.5 when the bus is overturned

on either side with the occupant standing and facing the exit. The roof exit shall be centered over the vehicle's longitudinal center line, with the geometric center of the exit opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. The roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

(B) If two emergency exits in addition to the ones specified by S5.2.3.2(a) (1) and (2) are needed to comply with S5.2.3.1, they shall be roof exits that meet the requirements of S5.3 through S5.5 when the bus is overturned on either side with the occupant standing and facing the exit. Each of the two roof exits shall be located over the vehicle's longitudinal center line, with the geometric center of each exit within the post and roof bow panel space nearest to the point that is equidistant from the nearest longitudinal end of the passenger compartment and the geometric center of the other roof exit. Each roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

(4) If one emergency exit in addition to the ones specified by S5.2.3.2(a)(1), (2)(B), and (3) are needed to comply with S5.2.3.1, it shall be a side exit door, hinged on its forward side and located in the rear third of the occupant space on the right side of the bus.

(b) One emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its rearward side, and a push-out rear window that provides a minimum opening clearance 16 inches high and 48 inches wide and, if necessary, a sufficient number of additional side emergency doors for the bus to comply with the total area required by S5.2.3.1. The window shall be releasable by operation of not more than two mechanisms which are located in the high force access region as shown in Figure 3C, and which do not have to be operated simultaneously. Release and opening of the window shall require force applications, not to exceed 40 pounds, in the directions specified in S5.3.2.

(1) If one additional emergency exit is necessary to comply with S5.2.3.1, it shall be an additional side door located on the vehicle's right side, with the front edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side, or it shall be located on the left side, in the front third of the passenger compartment.

(2) If more than one additional exit is needed to comply with S5.2.3.1, the requirements shall be met first by adding up to two roof exits that meet the requirements of S5.3 through S5.5 when the bus is overturned on either side with the occupant standing and facing the exit.

(A) If one roof exit is required, it shall be located over the vehicle's longitudinal center line, with the geometric center of the exit opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

(B) If two roof exits are required, each shall be located over the center aisle, with the geometric center of each exit equidistant (within a tolerance of one post and roof bow panel) from the longitudinal endpoints of the passenger compartment and each other. Each roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

S5.2.3.3 The engine starting system of a school bus shall not operate if any emergency door exit is locked from either inside or outside the bus. For the purposes of this section, "locked" means that the release mechanism cannot be activated by a person at the door without a special device such as a key or special information such as a combination.

6. Paragraph S5.3 would be revised to read as follows:

Note: This paragraph would be revised only if option B for amending S5.2.3 were adopted:

S5.3 *Emergency exit release.*

S5.3.3 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency door or roof exit shall allow manual release of the door by a single person, from both inside and outside of the passenger compartment, using a force application that conforms to paragraphs (a) through (c), except a school bus with a GVWR of 10,000 pounds or less does not have to conform to paragraph (a). Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the position that causes an exit door to be closed and the vehicle ignition is in the "on" position, a continuous warning shall be audible at the driver's seating position and in the vicinity of that emergency exit. Roof exits shall be hinged at the forward edge and have a single locking

mechanism which locks and unlocks the roof exit with a single force application not greater than 40 pounds.

7. Paragraph S5.4.2.1 would be revised to read as follows:

S5.4.2.1 School bus with a GVWR of more than 10,000 pounds.

(a) After the release mechanism has been operated, each emergency door of a school bus with a GVWR of more than 10,000 pounds shall, under the conditions of S6, before and after the window retention test required by S5.1, using the force levels specified in S5.3.3, be manually extendable by a single person to a position that permits—

(1) In the case of a rear emergency door, an opening large enough to permit unobstructed passage of a rectangular parallelepiped 45 inches high, 24 inches wide, and 12 inches deep, keeping the 45-inch dimension vertical, the 24-inch dimension parallel to the opening, and the lower surface in contact with the floor of the bus at all times; and

(2) In the case of a side emergency door, an opening at least 45 inches high and 24 inches wide. A vertical transverse plane tangent to the rearmost point of a seat back shall pass either 0.5 inches forward of the forward edge of the door or through a point not more than 0.5 inches rearward of the edge.

(b)(1) Any seat that is located so that any portion of the seat cushion

(A) Is within the transverse, horizontal projection of a side emergency door and

(B) Is between the door, and the longitudinal vertical plane bisecting the bus, shall comply with paragraph (2) of this section

(2) Any seat meeting the criteria of paragraph (A) of this section shall have a pivoting seat bottom that automatically assumes and retains a vertical position when not in use.

(c) No barrier installed pursuant to S5.2 of 571.222 shall be located so that it is

(1) Within the transverse horizontal projection of any side emergency door, and

(2) Between the door, and the longitudinal vertical plane bisecting the bus.

8. Paragraph S5.5.3 would be revised to read as follows:

S5.5.3 School bus. Each school bus emergency exit provided in accordance with S5.2.3 or S5.2.3.1 shall have the designation "Emergency Door" or "Emergency Exit," as appropriate, in letters at least 2 inches high, of a color that contrasts with its background, located at the top of or directly above the emergency exit on both the inside

and the outside surfaces of the bus. Roof exit letters shall be located on the right or left side of the exit at a maximum distance of 12 inches from the roof exit opening. Each opening for a required emergency exit shall be outlined around its inside and outside perimeters with one inch wide retroreflective tape. The reflectivity of the tape shall be not less than 230 candelas/footcandle/ft², as tested in accordance with S6.2 of Standard No. 125 (§ 571.125) Concise operating instructions describing the motions necessary to unlatch and open the emergency exit, in letters at least three-eighths of an inch high, of a color that contrasts with its background, shall be located within 6 inches of the release mechanism on the inside surface of the bus.

Example

- (1) Life to Unlatch, Push to Open
- (2) Lift Handle, Push Out to Open

Issued on: March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6166 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

School Bus Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision not to initiate rulemaking.

SUMMARY: The National Academy of Sciences published a report in May 1989 entitled "Improving School Bus Safety." While the report confirmed the high level of safety provided by the nation's school bus fleet, it suggested measures to further improve the safety of school buses. Among the recommendations was a suggestion to raise the minimum height of large (GVWR of over 10,000 pounds) school bus seat backs from the current 20 inches, to 24 inches above the seating reference point.

In response to the NAS report, NHTSA published on July 13, 1989 (54 FR 29629) its review of the report. NHTSA identified those NAS recommendations which the agency believed would be "most effective" in improving the safety of school children while boarding, exiting and riding in school buses. NHTSA concluded that all of the "most effective" measures dealt with the safety of children in loading zones, since studies have shown that the greatest risk to children occurs while they are boarding and exiting the bus,

not while riding in the bus. Other NAS recommendations, primarily those which were designed to improve school bus occupant safety, were categorized as being "effective" because the safety risk to school bus occupants is already low, resulting in a lower potential for safety benefits.

After fully considering the NAS recommendations and analyzing the available data, NHTSA has decided that it will not initiate rulemaking to raise the minimum height requirements for seat backs on large school buses.

FOR FURTHER INFORMATION CONTACT:

Charles L. Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 7th St., SW., Washington, DC 20590 (202) 366-4799.

SUPPLEMENTARY INFORMATION:

In a May 1989 report entitled "Improving School Bus Safety" prepared in response to a Congressional mandate, the National Academy of Sciences (NAS) recommended that the minimum school bus seat back height required by Federal Motor Vehicle Safety Standard (FMVSS) No. 222, School bus passenger seating and crash protection for large school buses (those with a GVWR over 10,000 pounds) be raised from the current 20 inches to 24 inches above the seating reference point in order to provide added crash protection. The NAS made this recommendation despite its recognition that there was an absence of any real-world data to measure the potential effectiveness of higher seat backs.

NHTSA published a review of the NAS report on July 13, 1989 (54 FR 29629). In that review, the agency identified those NAS recommendations which the agency believed would be "most effective" in improving the safety of school children while boarding, exiting and riding in school buses. NHTSA concluded that all of the "most effective" measures dealt with the safety of children in loading zones, since studies have shown that the greatest risk to children occurs while they are boarding and exiting the bus, not while riding in the bus. Other NAS recommendations, primarily those which were designed to improve school bus occupant safety, were categorized as being "effective" because the safety risk to school bus occupants is already low, resulting in a lower potential for safety benefits.

In its review, NHTSA agreed that higher seat backs on large school buses would provide a larger padded surface for occupant protection, but noted that they might impede access to emergency

exits in some situations, and that this could reduce the seating capacity of some buses. In addition, the agency noted that higher seat backs could impede driver visibility and reduce the ability of the driver to monitor student behavior. Because of these concerns, the agency stated that additional information regarding the benefits and operational aspects of higher seat backs would be sought and reviewed before the agency decided to initiate rulemaking on this subject.

In reaching its decision not to initiate rulemaking to increase the height of seat backs in large school buses, NHTSA has examined the available data and relevant studies. This information, which is available in Docket 73-03-GR, is summarized below.

A. A 1987 evaluation of large school bus safety performance conducted by the National Transportation Safety Board, which concluded that the school bus safety standards which became effective in 1977, and particularly the "compartmentalization" requirements of FMVSS No. 222, provide high levels of safety to school bus occupants.

B. A series of three crash tests using anthropomorphic dummies conducted by UCLA in 1967 using a 60-passenger bus equipped with several types of restraints and seat types, including seats of various heights. The study concluded that the backs of school bus seats should be at least 28 inches high as measured from the seat cushion. (This 28 inch seat back, and those mentioned below are equivalent to a seat back 24 inches high as measured from the seating reference point, the measure which is used in determining compliance with Standard No. 222.) In addition, the study concluded that high backed seats (28 inches or more) greatly contribute to the compartmentalization of passengers, thereby reducing the chances of injuries sustained by passengers being hurled against one another, regardless of size.

C. Two crash tests conducted by UCLA in 1972 in which a bus was again equipped with different types of seats and restraints. This study concluded that in a head-on collision, the average size school child would sustain less head impact forces (44 g's versus 67 g's) if left unbelted, provided he was protected by the 28 inch high energy-absorbing seatback designed by UCLA.

D. A series of sled tests conducted by NHTSA in 1975 to consider the safety implications of different seat back heights. The tests involved seat backs of 20, 22 and 24 inches above the seating reference point. During these tests, 50th percentile dummies tended to "stand up" as their knees struck the seat back in front of them and their head and torso

rotated forward and upward. Lower seat backs exaggerated this tendency for dummies to "stand up." The study concluded that seat back height is not particularly significant in frontal impacts, except in aggravating the problem of dummies "standing up," which is caused in turn by improper phasing. The study also noted that the major consideration in determining proper seat back height may be one not addressed in the study, i.e., the whipping of the head over the top of the seat back in rear impacts.

In promulgating FMVSS No. 222 in 1976, the agency noted that: "While the NHTSA does not dispute that a properly constructed, higher seat back provides more protection than a lower seat back, the data support the agency's determination that the 20-inch seat back provides a reasonable level of protection. School bus accident data do not provide substantial evidence of a whiplash injury experience that could justify a 4-inch increase in seat back height." (41 FR 4017, January 28, 1976).

In a July 1976 response to a petition for reconsideration of this rule from the Physicians for Automotive Safety, seeking to have seat back height raised from 20 to 24 inches, NHTSA stated:

In support of this position, the organization set forth a "common sense" argument that whiplash must be occurring to school bus passengers in rear impact. However, the agency has not been able to locate any quantified evidence that there is a significant whiplash problem in school buses. The crash forces imparted to a school bus occupant in rear impact are typically far lower than those imparted in a car-to-car impact because of the greater weight of the school bus. The new and higher seating required by the standard specifies energy absorption characteristics for the seat back under rear-impact conditions, and the agency considers that these improvements over earlier seating designs will reduce the number of injuries that occur in rear impact. (41 FR 28507, July 12, 1976).

As noted by the NAS report, "any attempt to characterize the safety of school bus seats by a single factor is overly simplistic." The NAS report concluded that:

The relative safety of a school bus seat is a function of several variables acting in concert. Among the variables of consequence are seat back height, spacing, padding, deformation characteristics, and the use or nonuse of a lap belt, in addition to the size and physical attributes of the dummy used in testing and the index (e.g., HIC, maximum chest acceleration, etc.) by which performance of the seat is assessed.

In the NAS report, estimates of effectiveness were made for nine different safety measures. The NAS committee characterized most of these

estimates, including the seat back height effectiveness estimate, as "conjectural." It does not appear reasonable for the agency to initiate rulemaking in an area that not only offers a limited potential safety benefit (an estimated 0-20% effectiveness as suggested by the NAS), but also has estimated benefits which have no foundation. Neither the NAS nor any other party has provided any real-world crash data to support the claimed benefits of higher seat backs.

The claimed benefits of higher seat backs are primarily based upon the UCLA crash tests. In an effort to maximize the amount of data from each test, the school buses were equipped with many different seats, restraint systems and dummy sizes. For example, the bus used in the 1967 tests was equipped with 11 types of seats, 5 different restraint configurations and 5 dummy sizes. The test bus contained 36 seated dummy passengers. As a result, there was only a single test conducted for each combination of dummy, restraint and seat type in the bus. The agency believes it is inappropriate to draw conclusions based on the results of a single test.

While the 1972 tests used only three seat types, there were still four dummy sizes and two restraint conditions. In addition, some of the seats were in a rear-facing orientation. This resulted in very little duplication of test conditions among the 42 passenger dummies on that bus. As with the 1967 test, the agency is reluctant to rely on such limited testing of the several configurations.

NHTSA is aware that two States, New York and Illinois, require seat backs on public school buses that are higher than those required by FMVSS No. 222. The agency requested these States to provide information on the motivation, costs, and benefits of requiring the higher seat backs. The responses from New York and Illinois have been placed in Docket 73-03-GR.

Illinois authorities responded that their requirement resulted from a political compromise in discussions over mandatory seat belts on school buses. Since the Illinois requirement became effective in 1987, the State has purchased approximately 4,000 buses. The requirement added \$330 per bus, resulting in a total extra cost of \$1.3 million. Aside from the assumed benefit of greater protection, no actual benefits have been determined. There have been no reported increases in driver operational problems such as reduced visibility, or in the driver's ability to monitor passengers and avert behavioral incidents. NHTSA notes that

the costs reported by Illinois are more than twice that estimated by the NAS report (\$330 per bus versus \$150 per bus). This discrepancy would significantly change the benefits estimated by the NAS for higher seat backs, which are expressed in terms of lives saved and injuries reduced per \$1 million spent per year. The higher costs cut the NAS's estimated benefits per \$1 million invested by half. Conversely, to obtain the NAS's estimated benefits would double the costs. These costs also affect the relative cost effectiveness of higher seat backs when compared with other safety measures discussed in the NAS report.

New York responded that their higher seat back requirements predate FMVSS No. 222, but were based upon information contained in an NPRM for Standard No. 222 issued in 1975. New York instituted the requirement, along with several others that exceed Federal minimum standards after a tragic 1972 school bus crash in Congers, NY. While the State believes that more padded surface area is safer, it has reported no actual benefits from its higher seat backs. New York did not have any information on increased costs, and did not report any operational or behavioral incidents.

NHTSA has also considered a recent study by the Canadian government on school bus occupant protection that found high back (28 inch) seats, in use on an experimental basis, caused a visibility problem for drivers on the right-hand side because the drivers had difficulty seeing traffic approaching from an angle on the right. The seats were also thought to be the source of complaints that aisle width was too narrow and that the seats were too close together. A copy of this study has been placed in Docket 73-03-GR.

Finally, in interviews conducted by the National Transportation Safety Board with the survivors of the tragic May 1988 Carrollton, KY, crash of a former school bus, several persons mentioned that they were able to escape from the bus by crawling across the tops of the seat backs (the seat backs on this bus were 18 inches above the seating reference point, as the bus was built prior to the effective date of Standard No. 222). Higher seat backs could have hampered this means of escape, and possibly exposed these survivors to denser concentrations of the toxic fumes and smoke.

As discussed above, the NAS report neither provided any real-world data to support its recommendation, nor did it provide any information indicating that current school bus seat backs are ineffective. As the report aptly points

out, attempting to characterize the crashworthiness of school bus seats by a single attribute, such as seat back height, is unrealistic.

While a limited and dated amount of crash test data indicate that higher seat backs may provide a greater measure of occupant protection, especially for older and larger students, there is no compelling evidence in real-world school bus operations to indicate that current seat back heights are inadequate. Additionally, the agency has concerns about the potential effects of higher seat backs, particularly with regard to their potential to impede access to emergency exits and driver visibility.

NHTSA is also concerned about the added costs of increasing seat back height. These costs must be viewed in the context of the various school bus safety rulemaking actions currently under consideration by the agency. These include revisions to FMVSS Nos. 111; Rearview mirrors, 217; Bus window retention and release, 221; School bus body joint strength, 302; Flammability of interior materials, and a new standard on stop signal arms. In all school bus rulemaking activities, it is important to consider the costs and potential benefits of each proposal. In addition, it must be recognized that a large increase in the cost of a new school bus due to added safety requirements could delay the purchase of new school buses in school districts with budgetary concerns. Such delays would run counter to the central recommendation in both the NAS and NTSB studies, both of which strongly encourage the rapid replacement of school buses built before the 1977 effective date of most of the current school bus safety standards.

In light of the overall recommendation by the NAS that "a larger share of the school bus safety effort should be directed to bus stops and loading zones" and the undefined benefits coupled with the relatively high costs of increasing seat back heights for large school buses which are discussed above, the agency has concluded that it will not pursue rulemaking to increase the minimum seat back height requirement for large school buses.

Issued: March 11, 1991.

Barry Felice,

Associate Administrator, for Rulemaking.
[FR Doc. 91-6168 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 910354-1054]

RIN 0648-AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes a rule to implement Amendment 4 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This proposed rule would ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the Northwestern Hawaiian Islands (NWHI). Current emergency regulations have begun to provide a sound basis for assessing the effects of the fishery on protected species of marine animals, but these regulations will expire under time limits set by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This proposed rule would continue the requirement imposed by that emergency rule, add additional protected species study zones and allow for standardization of the permit application process.

DATES: Comments on the proposed rule must be received on or before April 26, 1991.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Copies of Amendment 4 and the incorporated environmental assessment may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813. Send comments on the proposed collection-of-information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514-6806, or Alvin Katekaru, Pacific Area Office, Southwest Region, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: Prior to implementation of the FMP, NMFS

issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish fishery. The opinion stated that the proposed FMP would not likely jeopardize any threatened or endangered species nor adversely affect any critical habitat for such species, and the opinion made conservation recommendations to ensure that NMFS and the Western Pacific Fishery Management Council (Council) would obtain documentation of marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA.

The main concern with regard to the bottomfish fishery has been entanglement of monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of bottom set gill nets and bottom trawl nets in the NWHI.

Reports were received in April 1990 that monk seals were being hooked by pelagic longline fishermen in the NWHI. Monk seals have been known to take bait from fishing hooks, although specific information does not exist. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the pelagic fishery. The number of dead monk seals found, nine, was well within the range of the number of animals normally reported each year. Nonetheless, injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack or to male monk seal harassment.

NMFS Special Agents interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action; however, there was consistency in the reports that raised enough concern to initiate an effort to obtain definitive information on possible impacts from longline fishing in the pelagic as well as the bottomfish fishery.

At a meeting on June 20, 1990, the Council heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the Hawaiian longline fishery and the possible effects this increase might have on the harvest of pelagic resources. The Council also heard reports on the investigations into interactions between the pelagic longline, and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to take the following emergency actions: (1) Implement a permit and logbook reporting system for the pelagic fishery, and (2) implement an observer program to place observers on selected pelagic and bottomfish vessels operating within a 50 nautical mile (nm) study zone around certain islands in the NWHI. Permit requirements were already in effect for the bottomfish fishery.

Emergency regulations for the NWHI bottomfish fishery were promulgated effective November 27, 1990 (55 FR 49050, November 26, 1990). The regulations stipulate that no bottomfish vessel can fish within 50 nm of certain islands in the NWHI (French Frigate Shoals, Gardner, Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Islands), unless the operator of the vessel has provided the Regional Director with an opportunity to place an observer aboard the vessel for that trip to document whether there are any interactions with protected species and if so, the particulars of the interactions. The estimated cost to NMFS for placing observers on selected bottomfish vessels is \$60,000 per year (15 observer trips).

The primary reason the Council proposed this observer requirement on an emergency basis was the precarious condition of the Hawaiian monk seal population, which made it imperative that accurate and site specific data on interactions be collected immediately. If interactions were in fact occurring, the effects of such interactions could be evaluated and solutions to any problems could be identified quickly. Therefore, in the Council's view, it was crucial that this rule go into effect on an emergency basis, and this was approved by the Secretary.

Amendment 4 proposes that regulations that would institute these emergency measures on a permanent basis go into effect upon the expiration of the emergency regulations, if not sooner. In the Council's view, the conditions that generated the need for emergency action continue to exist, and implementation of Amendment 4 will provide for continuation of data collection necessary to arrive at long-term solutions to conservation problems facing the bottomfish fishery.

With the Council's concurrence the proposed rule varies from the emergency rule in the following ways. In addition to continuing the emergency rule requirement of notifying the Regional Director before fishing within 50 nm of certain NWHI, the proposed regulations would extend this requirement to

include the waters within 50 nm of Nihoa Island, Necker Island and Maro Reef. These areas are referred to as protected species study zones. These regulations would also authorize the Regional Director, Southwest Region, NMFS, to adjust the size of the protected species study zones after consultation with the Council, if it is determined that the fishery is not adversely affecting any threatened or endangered species.

The proposed rule would also revise requirements pertaining to permit applications to allow for consolidation in the permit application process for fisheries in the western Pacific region.

In addition, a technical revision is being made to § 683.21 (a)(4). In this paragraph the word groundfish would be revised to read bottomfish so that the meaning of the paragraph is consistent with the original intent and language of the bottomfish fishery limited access program, which was established by Amendment 2 to the FMP. This revision would not affect the status quo of the fishery.

The Secretary requests comments on the Council's proposal.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, would take into account the data, views, and comments received during the comment period.

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow the regular procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft regulatory impact review (RIR), which is incorporated into the draft amendment. The RIR demonstrates long-term benefits to the fishery under the proposed management measures. The

proposed rule, if adopted, is not expected to have an annual impact of \$100 million or more, nor lead to an increase in costs or prices to consumers, individual industries, Federal, state, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

The Council prepared an environmental assessment (EA) for the amendment that is incorporated into the amendment document. A copy of the EA is available from the Council (see ADDRESSES).

This rule would maintain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This requirement was established by the emergency rule as a result of the observer program. Placing observers aboard bottomfish vessels in the NWHI ensures the collection, processing and analysis of data needed for sound management decisions. Vessel owners or operators who intend to fish within protected species study zones around certain northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island) must notify the Regional Director so that NMFS has the opportunity to place an observer aboard their vessels. Observers will ensure the collection of data and document whether there are adverse interactions with protected species and the particulars of the interactions. The public reporting burden for this collection-of-information is 2 minutes for the pre-trip notification. This includes the time to review and compile the information. This collection-of-information has been approved by OMB, OMB Control Number 0648-0214.

With the Council's concurrence a revised reporting requirement is proposed under this rule. Information requested from bottomfish permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fisheries permits in the western Pacific region. An applicant for a NWHI bottomfishing permit would use the same application

form and provide the same information on vessel owner, vessel operator, and vessel as a person who applies for a precious corals, crustaceans, and/or pelagic longline fishing permit(s). The public reporting burden for this collection-of-information is estimated to average 15 minutes per application. A request for approval of this information collection has been submitted to the OMB as part of a request for extension of authority to continue collections under the title, Southwest Region Federal Fisheries Permits. Send comments on the reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to OMB (see ADDRESSES).

The Council determined that this rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the State of Hawaii and the Territories of American Samoa and Guam. This determination has been submitted for review by the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act.

Implementation of this rule is not an action that will adversely affect any species listed as endangered or threatened under the Endangered Species Act of 1973 or any species protected by the Marine Mammal Protection Act of 1972.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 11, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is proposed to be amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUND FISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.2, the following definitions are added in alphabetical order to read as follows:

§ 683.2 Definitions.

* * * * *

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 683.6, new paragraphs (i), (j), and (k) are added to read as follows:

§ 683.6 Prohibitions.

* * * * *

(i) Fishing within the protected species study zones in the Northwestern Hawaiian Islands without notifying the Regional Director of the intent to fish in these zones as required under § 683.29.

(j) Fishing without an observer after having been requested to do so by the Regional Director as required under § 683.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

4. In § 683.21 paragraphs (a)(4), (b), (d), (e)(2), and (g) are revised to read as follows:

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(4) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalulu Zone and the Mau Zone at the same time.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner or a designee of the owner at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contain at least the following information:

(i) Whether the application is for a new permit or a renewal;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Whether the vessel is used primarily for fishing or transshipment activities;

(viii) Official number of the vessel;

(ix) Radio call sign of the vessel;

(x) Principal port of the vessel;

(xi) Length of the vessel;

(xii) Engine horsepower;

(xiii) Approximate fish hold capacity;

(xiv) Number of crew;

(xv) Construction date;

(xvi) Date vessel purchased;

(xvii) Purchase price;

(xviii) Type and amount of fishing gear carried on board the vessel;

(xix) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xx) Signature of the applicant; and

(xxi) Date of signature.

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) * * *

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(g) *Renewal.* An application for renewal must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

5. A new § 683.29 is added to read as follows:

§ 683.29 Observers.

(a) The owner or operator of a fishing vessel subject to this part shall inform the Pacific Area Office by telephone, (808) 955-8831, at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species

study zones located within 50 nm of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island of the NWHI. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director.

(d) The Regional Director may change the size of any of the protected species study zones described in paragraph (a) of this section:

(1) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the Endangered Species Act;

(2) After consulting with the Council; and

(3) Through a notice of the Federal Register published at least thirty (30) days prior to the effective date or through actual notice to the permit holders.

(e) All observers must be provided with sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the

Regional Director prior to the vessel's departure from port.

[FR Doc. 91-6240 Filed 3-12-91; 2:59 pm]

BILLING CODE 3510-22-M

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 2 to its Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review and is requesting comments from the public. Copies of Amendment 2 may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the amendment should be submitted on or before May 6, 1991.

ADDRESSES: All comments should be sent to E. C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, Hawaii 96813, (808) 541-1974.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514-6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 855-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 2 proposes to establish on a permanent basis the permit,

logbook, and observer requirements applicable to longline fishing and transshipping vessels in the exclusive economic zone (EEZ) of the western Pacific under emergency rules promulgated by the Secretary of Commerce, at the Council's request, effective November 27, 1990 (55 FR 49285). These emergency regulations will remain in effect until May 25, 1991. Amendment 2 differs from the emergency rule in the following ways: (1) Permit and reporting requirements apply throughout the entire range of tuna, billfish, oceanic sharks, mahimahi, and wahoo in the tropical and subtropical central and western Pacific; (2) Maro Reef, Nihoa and Necker Islands have been included in the protected species study area; (3) the Regional Director, NMFS, Southwest

Region, is authorized to change the size of the study area upon consultation with the Council if the Regional Director finds that the fishery is not having an adverse impact on protected species; (4) vessel operators are required to attend an orientation meeting with the Pacific Area Office regarding procedures for protecting endangered and threatened species, marling mammals and seabirds; (5) a transshipment logbook form is required for reporting transshipments of longline-caught fish; (6) longline vessel operators are required to mark their longline floats so that the gear can be identified; and (7) permits will not be renewed for vessels which fail to comply with reporting requirements.

The Council proposes that the effective date of the amendment

coincide with expiration of the emergency regulations.

An environmental assessment and a regulatory impact review/initial regulatory flexibility analysis are incorporated into the amendment which can be obtained from the Council (see ADDRESSES).

Proposed regulations to implement Amendment 2 are scheduled to be filed at the Office of the Federal Register within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-6200 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-032]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 14 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT:

Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations is 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through

Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulate articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organism | Field test location |
|---|--|---------------|---|--|
| 91-039-01, renewal of Permit 89-257-04, issued on 02-21-90. | U.S. Department of Agriculture, Agricultural Research Service. | 02-08-91 | Potato plants genetically engineered to contain a marker gene. | Idaho. |
| 91-042-01..... | Agrigenetics Company..... | 02-11-91 | Rapeseed plants genetically engineered to express a deltaendotoxin protein from <i>Bacillus thuringiensis</i> subsp. <i>kurstaki</i> . | Wisconsin. |
| 91-042-02, renewal of Permit 89-290-01, issued on 02-16-90. | Auburn University..... | 02-11-91 | <i>Xanthomonas campestris</i> pv. <i>campestris</i> genetically engineered to contain a gene to confer bioluminescence as a marker. | Alabama. |
| 91-043-01..... | Louisiana State University..... | 02-12-91 | Rice plants genetically engineered to contain a hygromycin marker along with one of the following structural genes: a rice storage protein gene, bean storage protein gene, pea storage protein gene, and a deltaendotoxin protein from <i>Bacillus thuringiensis</i> subsp. <i>sotto</i> . | Louisiana. |
| 91-044-01..... | Campbell Institute for Research and Technology. | 02-13-91 | Tomato plants genetically engineered to express an antisense polygalacturonase (PG) gene. | California. |
| 91-050-01..... | Calgene, Incorporated..... | 02-19-91 | Tomato plants genetically engineered to contain an antisense polygalacturonase (PG) gene or the <i>tmr</i> developmental gene. | California. |
| 91-050-02..... | Monsanto Agricultural Company..... | 02-19-91 | Potato plants genetically engineered to express the <i>Bacillus thuringiensis</i> subsp. <i>tenebrionis</i> delta-endotoxin protein. | Maine. |
| 91-051-01..... | Monsanto Agricultural Company..... | 02-20-91 | Soybean plants genetically engineered to confer tolerance to the herbicide glyphosate. | Georgia, Illinois, Indiana, Iowa, Kentucky, Nebraska, Ohio, & Tennessee. |
| 91-051-03..... | Upjohn Company..... | 02-20-91 | Soybean plants genetically engineered to confer tolerance to bialaphos herbicides. | Arkansas, Illinois, & Maryland. |
| 91-052-02..... | Montana State University..... | 02-21-91 | Potato plants genetically engineered to express a cecropin B analog gene intended to confer resistance to potato ring rot bacteria. | Montana. |

| Application No. | Applicant | Date received | Organism | Field test location |
|-----------------|--|---------------|---|---------------------|
| 91-052-06..... | Pioneer Hi-Bred International, Incorporated | 02-21-91 | Corn plants genetically engineered to confer tolerance to the herbicide chloresulfuron. | Iowa. |
| 91-052-07..... | Pioneer Hi-Bred International, Incorporated. | 02-21-91 | Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene. | Washington. |
| 91-052-08..... | Pioneer Hi-Bred International, Incorporated. | 02-21-91 | Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene. | Iowa. |
| 91-053-01..... | Upjohn Company..... | 02-22-91 | Tomato plants genetically engineered to express tobacco mosaic virus (TMV), or tomato mosaic virus (ToMV) coat protein; or expressing the TMV-U1 54 kD protein. | Michigan. |

Done in Washington, DC, this 11th day of March 1991.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.
[FR Doc. 91-6267 Filed 3-14-91; 8:45 am]
BILLING CODE 3410-34-M

Commodity Credit Corp.

Bylaws of Corporation

The Bylaws of the Commodity Credit Corporation, amended February 13, 1991, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.



MEETINGS OF THE BOARD

Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, on Wednesday at 9:30 a.m. in the Board

meeting room in the U.S. Department of Agriculture in the City of Washington, DC. Notice of such meetings shall be provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice President at the written request of any five Members. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any Member may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unless otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice

Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Corporation shall, as General Counsel and Associate General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Agricultural Stabilization and Conservation Service, and the Secretary shall attend meetings of the Board. Each of the Vice Presidents and Deputy Vice Presidents, and the Controller shall attend meetings of the Board during such time as the meetings are devoted to consideration of matters as to which they have responsibility.

9. Other persons may attend meetings of the Board upon specific authorization by the Chairman, Vice Chairman, or President.

Compensation of Board Members

10. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Member, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

11. The officers of the Corporation shall be a President, Vice Presidents,

and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

12. The Under Secretary of Agriculture for International Affairs and Commodity Programs shall be ex officio President of the Corporation.

13. The following officials of the Agricultural Stabilization and Conservation Service (hereinafter referred to as ASCS), Foreign Agricultural Service (hereinafter referred to as FAS), Food and Nutrition Service (hereinafter referred to as FNS), and the Agricultural Marketing Service (hereinafter referred to as AMS) shall be ex officio officers of the Corporation:

Administrator, ASCS; Executive Vice President.
 Administrator, AMS; Vice President.
 Administrator, FAS; Vice President.
 Administrator, FNS; Vice President.
 General Sales Manager and Associate Administrator, FAS; Vice President.
 Associate Administrator, ASCS; Vice President.
 Deputy Administrator, State and County Operations, ASCS; Deputy Vice President.
 Deputy Administrator, Commodity Operations, ASCS; Deputy Vice President.
 Deputy Administrator, Management, ASCS; Deputy Vice President.
 Deputy Administrator, Program Planning and Development, ASCS; Deputy Vice President.
 Executive Assistant to the Administrator, ASCS; Secretary.
 Director, Executive Analysis and Appraisal Staff, Office of the Administrator, ASCS; Deputy Secretary.
 Director, Financial Management Division, ASCS; Controller.
 Deputy Director, Financial Management Division, ASCS; Treasurer.
 Chief, Financial Accounting, Reports and Analysis Branch, Financial Management Division, ASCS; Chief Accountant.

The person occupying, in an acting capacity, the office of any person designated ex officio by this paragraph 13 as an officer of the Corporation shall, during his occupancy of such office, act as such officer.

14. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

15. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining or developing, or as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

16. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), and (e) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager and Associate Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those

operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FNS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FNS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

17. The Vice President who is the Associate Administrator, ASCS, and the Deputy Vice President shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Controller

19. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Treasurer

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the Corporation; and shall issue instructions incidental thereto; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall coordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for the account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

The Chief Accountant

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

Other Officials

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of ASCS, FAS, FNS, and AMS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of ASCS, FAS, FNS, AMS, or the

General Sales Manager and Associate Administrator, FAS.

23. The Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS shall be Contracting Officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

24. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

25. The Executive Vice President who is the Administrator of ASCS and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

26. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each instrument shall be filed with the Secretary.

27. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

28. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with

the Secretary of Agriculture and with the Board.

Amendments

29. These Bylaws may be altered or amended or repealed by the Secretary of Agriculture, or subject to his approval by action of the Board at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alternation, amendment, or repeal be contained in the notice of such special meeting.

Approval of Board Action

30. The action of the Board shall be subject to the approval of the Secretary of Agriculture.

I, James V. Hansen, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended February 13, 1991.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this eighth day of March, 1991.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 91-6162 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Sequoia National Forest, CA; Appeal Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Tule River Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Dennison Insect Salvage, Rogers Camp Insect Salvage, Needles Insect Salvage, Divide Insect Salvage, Wishon Insect Salvage, and Lloyd Meadows Insect Salvage analyses. These environmental analyses (which will be combined in one environmental document) are being prepared in response to the severe timber mortality in the Tule River and Kern River watersheds. The unusual mortality is being caused by drought and related insect infestation.

The Dennison Insect Salvage analysis area is within the North Fork of the Tule River watershed adjacent to the Mountain Home State Forest and one mile south of Sequoia National Park. The Rogers Camp Insect Salvage analysis is within the South Fork of the Middle Fork of the Tule River watershed

and is one mile north of the Tule River Indian Reservation. The Needles Insect Salvage analysis area is within the Peppermint and Needlerock Creek watersheds and is within one mile of the Kern River which is designated a Wild and Scenic River. The Divide Insect Salvage analysis area is within both the Tule River and Kern River watersheds, adjacent to the Golden Trout Wilderness to the north and adjacent to the Freeman Creek Redwood Grove to the east. The Wishon Insect Salvage analysis area is within the Hossack Creek watershed and is adjacent to the Mountain Home State Forest and the Doyle Springs community. The Lloyd Meadows Insect Salvage analysis is within the Lloyd Meadows and Freeman Creek watersheds and is within one mile of the Kern River which is designated as a Wild and Scenic River.

There are currently much higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. The Tule River District is proposing tractor harvest of 200 thousand (MBF) on 1,570 acres in the Dennison Insect Salvage analysis area, 200 MBF on 1,700 acres in the Rogers Camp Insect Salvage analysis area, 150 MBF on 2,700 acres in the Lloyd Meadows Insect Salvage analysis area, 800 MBF on 9,000 acres in the Divide Insect Salvage analysis area, and proposing harvest of 250 MBF on 1,400 acres, and 400 MBF on 4,100 acres employing both helicopter and tractor yarding in the Wishon and Needles Insect Salvage analysis area, respectively. No new road construction or road reconstruction is planned for any of the analysis areas. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly. (Species affected within all analysis areas are comprised of 50% pine and 50% fir).

Prompt removal of the dead and dying timber minimizes value and volume loss. It is likely that helicopter logging will be in progress on the Tule River District during the spring and early summer of 1991. If the proposed insect salvage projects are not delayed due to appeals, it is possible that the helicopter contractors will still be in the area and available to bid on contracts for the

helicopter salvage portions of the proposed project. If the proposed helicopter projects are delayed by appeals, it is likely that the helicopter contractors will have completed their current contracts and will not be available to bid on the proposed helicopter salvage. If this happens, it is likely that there will be no bids on the helicopter portions of the proposed project. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1992 logging season, which could decrease the value by as much as \$100,000. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decision for the proposed projects is scheduled to be issued in April 1991. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects would not be implemented this field season. This would result in substantial monetary loss.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands affected by drought-induced timber mortality in the North Fork of the Tule River, South Fork of the Middle Fork of the Tule River, Peppermint, Needlerock, and Hossack Creek watersheds. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648; or to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Tule River District Drought Related Insect Salvage Areas environmental document. Pursuant to 40 CFR 1501.7, scoping was conducted by the Tule River District Ranger to determine the issues to be addressed in the environmental analyses. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local

private property owners and others known to be interested. Copies of the scoping letters and responses are on file at the District office. The environmental document and related maps will be available for public review at the Tule River Ranger District Office, 32588 Highway 190, Springville, California 93265.

The catastrophic damage presently occurring in the six salvage areas involves approximately 20,470 acres. Within this area, approximately 4,000 acres, with an associated 2.0 million board feet, it presently being analyzed for salvage in six sales. The value to the Forest Service of the salvage volume is estimated at \$300,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Tular County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

The proposals are not expected to adversely affect snag-dependent wildlife species. Initial review indicates that post-harvest snag numbers will approximate the Forest Plan Standard and Guidelines of 1.5 snags per acre. No wild and scenic rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project areas.

Dated: March 8, 1991.

Joyce T. Muraoka,
Deputy Regional Forester.

[FR Doc. 91-6180 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-11-M

Buck-Allen Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to harvest timber in the Underwood Mountain Area. A portion of the project is within the released Underwood Roadless Area. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by June 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charley Fitch, District Ranger, Shasta-Trinity National Forests, Star Route 1, Box 10, Big Bar, California 96010.

FOR FURTHER INFORMATION CONTACT:

Direct questions about the proposed action and environmental impact statement to Dick Stiliha, Timber Management Officer, Shasta-Trinity National Forests, Star Route 1, Box 10, Big Bar, California 96010, phone (916) 623-6106.

SUPPLEMENTARY INFORMATION: In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives including that of no action for the analysis area. Other alternatives will consider harvesting from 5.0 to 8.0 million board feet of timber using a variety of silvicultural (i.e., partial, shelterwood, and clear cutting) and logging (i.e., helicopter, tractor, and cable) systems.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, California 96001, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of

availability appears in the Federal Register. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed (see The Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by September 1992. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: March 8, 1991.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 91-6138 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: Advance Monthly Retail Sales Survey

Form number(s): B-104(87)

Agency approval number: 0607-0104

Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

Burden: 3,267 hours

Number of respondents: 3,267

Avg hours per response: 5 minutes

Needs and uses: The Bureau of the Census uses the Advance Monthly Retail Sales Survey to collect monthly sales data from a national panel of retail establishments. The survey provides an early indication of current retail trade activity at the United States level. The Council of Economic Advisors, Bureau of Economic Analysis, Federal Reserve Board, and other government agencies and businesses use the monthly sales estimates in formulating economic decisions.

Affected public: Businesses or other for-profit organizations; Small businesses or organizations

Frequency: Monthly

Respondent's obligation: Voluntary

OMB desk officer: Marshall Mills, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6250 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Census

Title: Monthly Wholesale Trade Survey

Form number(s): B-310

Agency approval number: 0607-0190

Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

Burden: 5,332 hours

Number of respondents: 5,559

Avg hours per response: 10 minutes

Needs and uses: The Bureau of the

Census conducts this survey to obtain sales and inventory data from merchant wholesalers in order to produce statistics on wholesale sales, end-of-month inventories, methods of inventory valuation, and stock/sales ratios. The Bureau of Economic Analysis (BEA) uses wholesale data in its calculations of the Gross National Product (GNP). The BEA also uses data on methods of inventory valuation and changes in valuation methods to improve the reliability of inventory adjustments applied in the quarterly GNP estimates. Other government agencies and businesses use the published estimates to gauge the current trends of the economy.

Affected public: Businesses or other for-profit organizations, Small businesses or organizations

Frequency: Monthly

Respondent's obligation: Voluntary

OMB desk officer: Marshall Mills, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6251 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 13-91]

Foreign-Trade Zone 25—Broward County, FL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Everglades Authority, grantee of FTZ 25, requesting authority to expand its zone to include the Westport Business Park in the Town of

Davie, Broward County, Florida, within the Port Everglades Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 1991.

FTZ 25 was approved on December 27, 1976 (Board Order 113, 42 FR 61, 1/3/77), and expanded on August 11, 1978 (Board Order 132, 43 FR 36989, 8/21/78). The zone project currently consists of an 82-acre industrial park site within the 300-acre Port Everglades port complex and a privately owned public warehousing facility (47,000 sq. ft.) located adjacent to the port at 1100 NE., 7th Avenue, Dania, Florida.

The grantee is now requesting authority to expand the zone to include, as an additional zone site, the Westport Business Park (91 acres) located at 3001 SW. 64th Avenue in Davie, some 3 miles east of the port. The park is owned by Westport Business Park Limited Partnership and operated by the Trammel Crow Company. No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, FL 33131-2592; and, Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232-0019.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 1, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 13123, State Road 84, Fort Lauderdale, FL 33316.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 12, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-6252 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 28-85]

Foreign-Trade Zone 30—Salt Lake City, UT, Application for Subzone, Hercules Carbon Fiber Plant, Magna, UT; New Information/Reopening of Comment Period

The comment period for the above case involving a proposed special-purpose subzone for the carbon fiber materials plant of Hercules, Inc., in Magna, Utah (50 FR 33808, 8/21/85), is reopened until April 30, 1991, to provide interested parties with an opportunity to comment on new information submitted by the applicant. The applicant has submitted the information pursuant to 15 CFR 400.1310, based on changed circumstances. The new information discusses changed market conditions with respect to carbon fiber materials and polyacrylonitrile (PAN) fiber used in its production.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 11, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-6253 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 15, 1991.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 29, 1992.

| Antidumping duty proceedings | Periods to be reviewed |
|---|------------------------|
| Canada: Racing Plates A-122-050 Equine Forgings..... | 2/1/90-1/31/91 |
| Japan: Mechanical Transfer Presses A-588-810 Fukui, Aida Engineering Ltd., Hitachi Zosen Corp., Ishikawajima- Harima, Heavy Indus- tries. | 8/18/89-1/31/91 |
| Korea: Small Business Tele- phones A-590-803 Samsung Electronics Co. Ltd. | 8/3/89-1/31/91 |
| Countervailing duty proceedings | Periods to be reviewed |
| Saudi Arabia: Carbon Steel Wire Rod C-517-501 | 1/1/90-12/31/90 |
| Thailand: Malleable Iron Pipe Fit- tings C-549-803..... | 1/1/90-12/31/90 |

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: March 8, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance,
[FR Doc. 91-6254 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-25-M

INTERNATIONAL TRADE
ADMINISTRATION

[A-427-801]

Antifriction Bearings (Other Than
Tapered Roller Bearings) and Parts
Thereof From France; Preliminary
Results of Antidumping Duty
Administrative Reviews and Partial
Termination of Antidumping Duty
Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and notice of partial termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof, cylindrical roller bearings (CRBs) and parts thereof, and spherical plain bearings (SPBs) and parts thereof. The reviews cover 10 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Although we initiated reviews for 3 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn.

As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 66.42 percent for BBs, from 0.29 to 22.73 percent for CRBs, and from 22.84 to 39.00 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF France, SARMA, and ADR), Thomas McGinty (SNECMA, Dowty Rotol, Turbomeca, Aerospatiale, and Fiat), Maureen McPhillips (SNR and INA Roulements), Laurel Lynn (Pratt & Whitney), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published

in the Federal Register (54 FR 20902) the antidumping duty orders on ball bearings, cylindrical roller bearings, spherical plain bearings, and parts thereof from France.

On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Subsequent to the publication of our notice of initiation of these reviews, we received timely requests for withdrawal of review for certain firms. Because there were no requests for review from any other interested parties, we are terminating these reviews with respect to the following firms, in accordance with 19 CFR 353.22(a)(5):

| Name of firm | Class or kind |
|--------------------------------|---------------|
| Application Aeronautique | All |
| Valeo, Societe Anonyme | All |

Although we initiated separate reviews of SARMA and ADR Les Applications, these firms are affiliated with SKF France. Accordingly, we are treating SKF France, SARMA, and ADR as one entity for these reviews, and sales by SARMA and ADR will receive the SKF France rate.

Subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation, to review all of its imports of BBs and CRBs from the United Kingdom. The request covered Dowty Rotol Ltd., a British-based reseller of BBs and CRBs produced not only in the United Kingdom, but in France as well. Dowty Aerospace informed us that its review request was intended to include all imports from Dowty Rotol of BBs and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed French-made BBs and CRBs sold by Dowty Rotol Corporation from the United Kingdom to the United States.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and

aggregate cost and adjustment data. SNECMA and Pratt & Whitney chose this option.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

SNFA provided an inadequate response to the Department's questionnaire. INA Roulemates S.A. did not respond at all. For these firms, we used the highest margin calculated in the final determination of sales at less than fair value (LTFV) or this review as the best information otherwise available (BIA).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ

cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. HTS item numbers are provided for convenience and Customs purposes. In each case, the written description remains dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that the load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews", published concurrently with this notice.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of

these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988; January 22-28, 1989, March 5-11, 1989; June 4-10, 1989; August 20-26, 1989; October 1-7, 1989; November 5-11, 1989; January 14-20, 1990; and March 4-10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from both PP and ESP for ocean freight, marine insurance, U.S. and French inland freight and insurance, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates.

We made additional deductions from ESP, where applicable, for commissions to unrelated parties, credit expenses, inventory carrying costs, warranty expenses, advertising and sales promotion expenses, repacking in the United States, technical service expenses, export selling expenses, product liability expenses, and indirect selling expenses. Billing adjustments, which are corrections to the unit price, were added to gross unit price for SKF-France, SARMA, and ADR.

We disallowed SNR's direct advertising claim since it was not tied directly to sales of the subject merchandise. Instead, we characterized the expense as an indirect expense, and allowed the deduction on ESP sales.

In the case of SNECMA, we did not make adjustments to the U.S. price for research and development, material procurement and handling, bank charges, and independent research and development. We have determined that the above are not selling expenses and therefore should not be considered in the calculation of U.S. price.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

Torrington, the petitioner, has alleged that bearings produced in France by SKF France have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

We consider those bearings otherwise subject to the order which are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaire, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

If subject bearings imported by firms under review constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise than bearings when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Foreign Market Value

The home market was viable for all companies. The Department used home market or constructed value (CV), as

defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney, which sells French-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that Canada is the appropriate home market for sales of French-origin AFBs by Pratt & Whitney Canada.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex-factory, ex-godown, or delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, handling charges, rebates, commissions, discounts, warranty expenses, technical service expenses, advertising and sales promotion expenses, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S.

selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses.

We disallowed SNR's direct advertising claim because the expense could not be tied directly to sales of the subject merchandise. Instead, we characterized the expense as an indirect advertising expense, and allowed it as a home market deduction.

Where appropriate, for SKF France, SARMA, and ADR, we added to the home market gross unit price billing adjustments, freight revenue, and packing revenue. Billing adjustments are adjustments to unit price.

In the case of SNECMA, we have not allowed adjustments to the home market sales price for research and development, material procurement and handling, general administrative costs, bank charges, and independent research and development. We have determined that these are not selling expenses and therefore should not be considered in the calculation of FMV.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigation for SKF France and SARMA (which submitted a consolidated response to the Department's questionnaire). As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were determined to be below cost, we did not disregard any sales and made normal price-to-price comparisons. When 10 percent or more, but less than 90 percent, of the sales of a particular model were determined to be below the cost of production, we excluded the below-cost sales of that model from our calculation of FMV. When 90 percent or more of the sales of a particular home market model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV.

CV was used for calculating FMV of a particular model if a firm made sales below cost of a particular model or if a firm did not have contemporaneous sales of such or similar merchandise in the home market. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expense, or the statutory minimum of ten percent of materials and fabrication, whichever was greater, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the

United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine the following margins for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|-------------------------------------|---------------------|
| Ball Bearings: | |
| SKF-France, SARMA, ADR..... | 6.97 |
| Fiat Aviazione S.p.A..... | 0.00 |
| SNECMA..... | 0.08 |
| Aerospatiale..... | 8.09 |
| Turbomeca..... | 10.43 |
| Pratt & Whitney Canada, Inc..... | 4.89 |
| SNR Roulements..... | 0.36 |
| INA Roulements..... | 66.42 |
| SNFA..... | 66.42 |
| Dowty Rotol..... | 66.42 |
| Cylindrical Roller Bearings: | |
| SKF-France, SARMA, ADR..... | No Sales |
| Fiat Aviazione, S.p.A..... | No Sales |
| SNECMA..... | 0.29 |
| Aerospatiale..... | 22.73 |
| Turbomeca..... | 1.88 |
| Pratt & Whitney Canada, Inc..... | 4.89 |
| SNR Roulements..... | 0.31 |
| SNFA..... | 22.73 |
| INA Roulements..... | 22.73 |
| Dowty Rotol..... | No Sales |
| Spherical Plain Bearings: | |
| SKF-France, ADR, SARMA..... | 29.55 |
| Aerospatiale..... | 22.84 |
| Pratt & Whitney Canada, Inc..... | No Sales |
| SNR Roulements..... | No Sales |
| Turbomeca..... | No Sales |
| INA Roulements..... | 39.00 |

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 am. Hearings for firms involved in the French review, if requested, will be held on April 23, 1991, in room 3407, at 10 am. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate, for each class or kind of merchandise of antifriction bearings, based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class of kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of our final results of these reviews for all shipments of the subject merchandise from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) If the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the final results of these reviews; (3) The cash deposit rate for all other manufacturers/exporters shall be 10.43 percent for shipments of ball bearings, 22.73 percent for shipment of cylindrical roller bearings, and 29.55 percent for shipments of spherical plain bearings. These are the highest non-BIA rates for any firms included in these reviews.

These deposit requirements, when imposed, shall remain in effect until

publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6255 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. The classes or kinds of merchandise covered by these orders are ball and cylindrical roller bearings. The reviews cover nine manufacturers/exporters and the period November 9, 1988 through April 30, 1990. Although we initiated a review for one other manufacturer/exporter, we are terminating the review because the review request was withdrawn. As a result of the reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 155.99 percent for ball bearings (BBs), and from 1.47 to 18.90 percent for cylindrical roller bearings (CRBs).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Edmond O'Neill (FAG Cuscineti), Thomas McGinty (SNECMA, FiatAvio S.p.A., Dowty Rotol), Michael Diminich (RIV-SKF), Laurel Lynn (Meter S.p.A., Rolls Royce), Michael Rill (Japanese Aero Engines Corporation), or Richard Rimlinger, Office of Antidumping

Compliance, International Trade Administration, U.S. Department of Commerce, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the *Federal Register* (54 FR 20903) the antidumping duty orders on ball bearings and cylindrical roller bearings, and parts thereof, from Italy. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

| Name of Firm | Class or Kind |
|---|---------------|
| FAG Cuscinetti | BBs & CRBs. |
| FiatAvio S.p.A. (Formerly FIAT Aviazione) | BBs & CRBs. |
| Meter S.p.A. | BBs & CRBs. |
| RIV-SKF | BBs & CRBs. |
| Rolls Royce | BBs & CRBs. |
| SNECMA | BBs & CRBs. |
| Somcat | BBs. |
| Danieli & Co. S.p.A. | BBs & CRBs. |
| Japanese Aero Engines Corporation | BBs & CRBs. |

Subsequent to the publication date of our notice of initiation, we received a timely withdrawal request for Danieli & Co. S.p.A. (Danieli). Because there were no other requests for review of Danieli from any other interested parties, we are terminating the review with respect to this company, in accordance with 19 CFR 353.22(a)(5).

Japanese Aero Engines Corporation had no sales of bearings subject to the antidumping orders during the review period. The firm will receive the rate for all other manufacturers/exporters indicated in this notice. Also, Rolls Royce had no sales of BBs and FAG Cuscinetti, Dowty Rotol and Meter S.p.A. had no sales of CRBs during the review period. These firms will also receive the rate for all other manufacturers/exporters with respect to these classes or kinds of merchandise.

Also, subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation to review all of its imports of BBs and CRBs produced not only in the United Kingdom, but in Italy as well. Dowty Aerospace informed us that its

review request was intended to include all imports from Dowty Rotol of BBs and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed Italian-made BBs and CRBs sold by Dowty Rotol Corporation from the UK to the United States.

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. In the Italian reviews, SNECMA and Rolls Royce opted for this method.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulation provide that we may take into account whether a party refuses to provide requested information 19 CFR 353.37(b). For purposes of these reviews, we have used the most adverse BIA, generally the highest rate for any company from the less than fair value (LTFV) investigation, whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA, generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

Somcat provided an inadequate response to the Department's questionnaire. We used the highest margin for any company from the final determination of the LTFV investigation as BIA.

Rolls Royce did not respond adequately to the questionnaire regarding sales of AFBs by its subsidiary, Northern Engineering, Inc. (NEI). For these sales, we applied the highest rate calculated for Italy in the LTFV investigation. Also Rolls Royce did not submit complete data on its spare parts sales, some of which included bearings. For these sales, we also applied the highest rate from the LTFV investigation.

Finally, Meter S.p.A. did not provide specific packing costs for its U.S. sale, because it could not separate its packing and freight expense. We have applied FAG Cuscinetti's ranged, publicly

available data for packing expenses as BIA.

Scope of Reviews

The products covered by these reviews are antifriction bearings (AFBs) (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade does not influence whether the bearing is covered by the order. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, has alleged that Meter S.p.A. did not report all sales of products subject to this review. These products are described as load rollers, thrust rollers, chain sheaves, conveyor

system trolley wheels, and chain wheels. Meter argues that these products are properly considered outside the scope of the order. What follows is our preliminary scope determination regarding these products. For purposes of these preliminary results, we have calculated Meter's margin based only on the sales reported.

Meter states that it reported all U.S. sales whose liquidation had been suspended under the antidumping duty orders issued on May 3, 1989, or under subsequent scope modifications to those orders. In support of its position that the products in question are not covered by the orders, Meter argues:

(1) Load rollers and thrust rollers are guide wheels specifically designed to guide the elevation of the mast uprights and the forklift carriage on forklift trucks and are, therefore, properly considered forklift truck mast components outside the scope of the orders. Meter states that Customs rulings provide that load rollers are not bearings but are parts suitable for use solely or principally with forklift trucks, classifiable under HTS item 8431.20.00. In support of its position, Meter provided New York Ruling 841216 (June 8, 1989) and Customs Headquarters Ruling 087775 (January 17, 1991). Meter states that the one Customs ruling which was provided by Federal-Mogul, in which these products are classified as bearings, was revoked by the Headquarters Ruling. Meter states that Customs Headquarters found that "[t]he load rollers function as wheels which have an outer section that rotates around a fixed inner section, and a reinforced tire designed to roll on certain surfaces and withstand impact." Meter, again referring to the Customs Headquarters Ruling, argues that "load rollers are wheels, not bearings, because 'load rollers perform the antifriction and support functions of complete wheels and similar rollers, not the functions of mere bearings.'"

(2) Chain sheaves are pulley wheels and idler pulleys specifically designed to facilitate the movement of chains and hydraulic hoses used to elevate and lower the carriage assembly of a forklift truck and are, therefore, properly considered forklift truck mast components outside the scope of the orders. Meter states that chain sheaves are classified by Customs as pulleys under HTS item 8483.50, and argues that even Federal-Mogul concedes that chain sheaves may be classified as pulleys and not bearings.

(3) Trolley wheels and chain wheels are guide wheels that roll along the tracks of a conveyor system, and are, therefore, properly considered conveyor

system components outside the scope of the orders. Meter states that trolley wheels and chain wheels for conveyor systems are classified under HTS 8431.20, the subheading for parts suitable for use solely or principally in conveyors and that Federal-Mogul does not dispute this.

Federal-Mogul argues that these products, all of which include ball bearings, are commonly referred to as mast guide bearings and chain guide bearings for forklift trucks, as well as trolley wheel bearings and chain wheel bearings for conveyor systems, and that all are properly considered within the scope of the order. In support of its position, Federal-Mogul argues:

(1) Both "load rollers" and "thrust rollers" for forklift applications are also known as mast guide bearings. Federal-Mogul states that these products are ball bearings in which (a) the outer race has been specially thickened and shaped to function as though it were a "tire" rolling up and down the mast channel or (b) a separately fabricated "tire" is placed around a bearing insert having a normal outer race. Federal-Mogul provided copies of various documents (April 1986 Federal-Mogul product brochure; Industrial Information Headquarters, Inc., "Bearing Manual Cyclopedic" (1981); and several Federal-Mogul drawings required by various companies) in which these articles are referred to by a variety of names. Federal-Mogul argues that regardless of whether these products are labelled as bearings or rollers or something else and regardless of whether they are associated with the word "load" or the word "thrust" they are mast guide bearings. Finally, Federal-Mogul argues that Customs classifications are not determinative for purposes of the antidumping law.

(2) Chain sheaves are also known as chain guide bearings. Federal-Mogul states that these are ball bearings with an integral outer race tire or with a separate tire for assembly around the outer ring. Federal-Mogul states that the aspect of a chain guide bearing which distinguishes it from a mast guide bearing is the contour of the outer race/tire. Further, Federal-Mogul states that the "Bearing Manual Cyclopedic" treats chain guide bearings merely as particular types of mast guide bearings. Finally, Federal-Mogul argues that although a bearing which functions as a pulley may be properly classifiable as a pulley for tariff purposes, no reasonable person should conclude that a mere change in contour of the outer race/tire would cause a mast guide bearing to cease being a bearing.

(3) These wheel items for conveyor systems embody no salient differences from the mast guide and chain guide bearings. Federal-Mogul states that these items may be constructed by employing a specially designed outer race to serve as the tire or by assembling a separate tire around a bearing insert having its own outer race.

In conclusion, Federal-Mogul argues that the products at issue frequently consist of nothing more than a ball bearing in which the outer race has been thickened and specially contoured to serve as the tire. Further, Federal-Mogul states that where these products consist of a bearing insert within a separate tire, they are still subject to the Department's review since housed bearings and mounted bearings are indisputably covered by the antidumping duty orders.

Analysis

Pursuant to 19 CFR 353.29(1), in considering whether a particular product is within the scope of an order, the Secretary will take into account the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission. With regard to the issue of whether the products in question are within the scope of the orders, we find the descriptions in the final determination of the LTFV investigation to be dispositive (see 54 FR 18992-19019, May 3, 1989).

In the LTFV investigation, we noted that "It should also be clear that tariff classification numbers are *not* determinative of the products under investigation. The written description of the scope of the investigation defines the products under investigation." (54 FR 18992, 19011, 19017, May 3, 1989, citation omitted). Therefore, we agree with Federal-Mogul that Customs classifications are not determinative for purposes of the antidumping law. Additionally, we disagree with Meter's position that because Customs did not suspend liquidation on its imports of these products that they are not within the scope of the order.

We preliminarily determine that both load rollers and thrust rollers, which Meter refers to as forklift truck mast components, are within the scope of the orders. These products contain the four basic components that most antifriction bearings contain: outer ring or outer race, inner ring or inner race, a series of balls or roller elements which fit into openings in the separator or cage, and a separator or cage which keeps the balls or rollers equally distributed around the races. (54 FR 19013, May 3, 1989). The fact that these products have either an

outer race thickened or shaped to function as a tire or a separately fabricated tire placed around a bearing insert does not remove these products from the scope of the orders. As noted in the final determination of the LTFV investigation (in discussing textile-machinery components) "bearings (including mounted or house units, and flanged or enhanced bearings) . . . are clearly covered by these investigations." (54 FR 18992, 19017, May 3, 1989). Further, in excluding split pillow block housings from the scope of the investigations, the Department noted that only those split pillow block housings which do not contain a subject bearing are outside the scope of the investigations, but the mounted bearings, such as pillow block units, are within the scope of the investigations.

Finally, the Department noted in its final determination that "any of the subject (antifriction) bearings, regardless of whether they may ultimately be utilized on textile machinery, aircraft, automobiles, or other equipment, are in fact within the scope of these investigations." (54 FR 18992, 19011, 19017, May 3, 1989, citation omitted). Therefore, we do not agree with Meter's argument that because these products are used in forklift truck applications that they are outside the scope of the orders.

We preliminarily determine that the products Meter refers to as chain sheaves are outside the scope of the orders. We disagree with Federal-Mogul's argument that these products are distinguished from mast guide bearings only by the contour of the outer race/tire. As noted in the Department's final determination, the primary AFB function is to reduce friction and wear between moving and fixed parts. (54 FR 18992, 18999, May 3, 1989). According to Meter and Customs, these products function as pulleys. Federal-Mogul does not dispute this. Therefore, we preliminarily determine that, because these products do not function as AFBs, as described in the Department's final determination, they are appropriately considered pulleys outside the scope of the orders.

We preliminarily determine that the products Meter refers to as trolley wheels and chain wheels for use in conveyor systems are outside the scope of the orders. Similar to the above discussion of chain sheaves, these products do not function as AFBs, as described in the Department's final determination. Rather, they function as wheels. Therefore, they are outside the scope of the orders.

We invite parties to comment on these preliminary scope determinations,

which we will address along with all other comments received regarding these preliminary results.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772, of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burdens involved in calculating individual margins for all these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988; January 22-28, 1989; March 5-11, 1989; June 4-10, 1989; August 20-26, 1989; October 1-7, 1989; November 5-11, 1989; January 14-20, 1990; and March 4-10, 1990. We reviewed all PP sales transactions during the period to review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions from both PP and ESP, where appropriate, for ocean freight, marine insurance, U.S. and foreign inland freight, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP, where appropriate, for commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses. We also added an amount for an import duty that was rebated or not collected by reason of the exportation of the merchandise, as specified in section 772(d)(1)(B) of the Tariff Act.

FiatAvio consigned merchandise to unrelated U.S. firms, which set the price and sold the merchandise after importation into the United States. The company claims that these are PP sales. However, because the sales occurred after importation, we consider them to be ESP transactions.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class of kind of merchandise subject to this review. We chose the

alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class of kind. We have also excluded from our calculations (but not from the orders) replacement bearings for defective parts, and bearings used as promotional samples.

We have excluded from the orders sales by FAG Cuscinetti and Rolls Royce to the U.S. government for military/defense procurement. These sales are excluded because they were made pursuant to a Memorandum of Understanding between Italy and the United States regarding military purchases, in accordance with section 1335 of the Omnibus Trade and Competitiveness Act of 1988.

Torrington, the petitioner, has alleged that bearings produced in Italy by RIV-SKF have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegation is inadequate, we have no reason to believe that SKF submitted an incomplete response.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the cases of Rolls Royce and SNECMA, which sell Italian-origin bearings from the U.K. and France, respectively to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that the U.K. and France, respectively, are the appropriate home markets for sales of Italian-origin AFBs by Rolls Royce and SNECMA.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a

bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire are verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculated FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex factory, ex godown, or delivered prices to the first unrelated purchases in the home market. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in the physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs for RIV-SKF and FAG Cuscinetti. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular home market model were determined to be below the cost of production, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV

includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, if these expenses exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, if it exceeded the statutory minimum requirement of 8 percent of the sum of materials, fabrication, and general expenses, and (3) packing costs for merchandise exported to the United States. We made circumstance of sale adjustments for all direct selling expenses in accordance with 19 CFR 353.56. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|---|---------------------|
| Ball bearings: | |
| FAG Cuscinetti..... | 33.82 |
| FiatAvio S.p.A..... | 0.00 |
| Meter S.p.A..... | 0.00 |
| SNECMA..... | 0.93 |
| Somcat..... | 155.99 |
| RIV-SKF..... | 0.14 |
| Rolls Royce..... | No Sales |
| Japanese Aero Engines Corpora- tion..... | No Sales |
| Dowty Rotol..... | 10.12 |
| Cylindrical Roller Bearings: | |
| FAG Cuscinetti..... | No Sales |
| FiatAvio S.p.A..... | 18.90 |
| Meter S.p.A..... | No Sales |
| RIV-SKF..... | 4.86 |
| SNECMA..... | 1.47 |
| Rolls Royce..... | 8.78 |
| Japanese Aero Engines Corpora- tion..... | No Sales |
| Dowty Rotol..... | No Sales |

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to Italy, if requested, will be held on April 24, 1991 in room 3407, at 2 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews,

including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise of antifriction bearings based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all subject units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 33.82 percent for shipments of ball bearings and 18.90 percent for shipments of cylindrical roller bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposit

requirements shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 8, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6526 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and notice of partial termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof, cylindrical roller bearings (CRBs) and parts thereof, and spherical plain bearings (SPBs) and parts thereof. The reviews cover 23 manufacturers/exporters and the period November 9, 1988 through April 30, 1990. Although we initiated reviews for 7 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 106.61 percent for BBs, from zero to 54.77 percent for CRBs, and from zero to 92.00 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Peer, Osaka Pump), Dionne C. Calloway (NTN, Isuzu), Wendy J. Frankel (Minebea, NPB), Robert Hamilton (Fujino, Izumoto Seiko), Kuroe, Nankai Seiko, Tottori Yamakai

(KYK)), Breck J. Richardson (Takeshita), Michael R. Rill (Honda, IJK, JAEC, Koyo, NSK, Yamaha), Lynette Stoltzfus (Asahi Seiko, Nachi, Nakai, Showa Pillow Block, Wada Seiko), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 20904) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), spherical plain bearings (SPBs), and parts thereof from Japan. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The initiation notice included reviews with respect to the following firms and classes or kinds of merchandise:

| Name of Firm | Class or Kind |
|-------------------------------|---------------|
| Fuji Heavy Industries..... | All. |
| HIC..... | All. |
| Kawaski Heavy Industries..... | All. |
| Matsuo Bearing Co..... | All. |
| R. Fukuda..... | All. |
| Sapporo Precision, Inc..... | All. |
| Uchiyama Mfg. Corp..... | All. |

Subsequent to the publication date of our notice of initiation of these reviews, we received timely requests for withdrawal of review for the above firms. Because there were no other requests from any other interested parties for these companies, we are terminating these reviews, in accordance with 19 CFR 353.22(a)(5).

We also incorrectly initiated a review with respect to cylindrical roller bearings sold by Minebea. Since no request was received for this class or kind of merchandise sold by Minebea, we are terminating this review.

Nakai Bearing, Nankai Seiko, and Takeshita Seiko had no sales of CRBs subject to the antidumping order during the review period. Koyo, Nachi, NSK, and Nakai Bearing had no sales of SPBs subject to the antidumping order during the review period. We will use the rate for all other manufacturers/exporters indicated in this notice with respect to these classes or kinds of merchandise.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were Honda Motor Co. (for its aftermarket sales) and Yamaha Motor Co.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

Asahi Seiko and Japanese Aero Engines Corp. provided inadequate responses to the Department's questionnaire. Minebea did not respond at all. For these firms, we used the highest margin calculated for BBs and SPBs in the final determination of sales at LTFV as BIA. For Asahi Seiko and Japanese Aero Engines Corp., we used the highest margin calculated for CRBs during this review, since that rate exceeds the highest rate calculated for this same class or kind of merchandise from the LTFV investigation.

Nippon Pillow Block could not substantiate its labor, overhead, selling, general, and administrative expenses at verification. However, because of the level of cooperation exhibited by company officials at verification and because the company's response and verification were otherwise adequate, we are not using the most adverse BIA. Rather, we are using the highest rate found for any company in these reviews.

For Kuroe, we also used BIA. Kuroe's primary supplier, Maehara, knew that sales it made to Kuroe were for

exportation to the United States. We understand that two minor suppliers had similar knowledge. Accordingly, we requested information from these suppliers concerning their sales to Kuroe destined for the United States. The two minor suppliers refused to respond. Although Maehara provided information which ultimately proved to be inadequate, the company attempted on numerous occasions to comply with our requests. Therefore, we used as BIA for Kuroe's sales of Maehara bearings the highest margin calculated for any company in these reviews. As BIA for Kuroe's sales of bearings supplied by the two minor suppliers, we used the highest margin calculated in the final determination of the LTFV investigation.

Scope of Review

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a

spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50. Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaire, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that 1) load and thrust rollers, 2) chain sheaves and 3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review," published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988; January 22-28, 1989; March 5-11, 1989; June 4-10, 1989; August 20-26, 1989; October 1-7, 1989; November 5-11, 1989; January 14-20, 1990; and March 4-10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to

unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for ocean freight, marine insurance, U.S. and Japan inland freight, U.S. brokerage and handling charges, U.S. customs duties, export inspection fees, and discounts and rebates. We made additional deductions from ESP for commissions to unrelated parties, credit expenses, warranty expenses, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

Izumoto Seiko identified the following indirect selling expenses as direct selling expenses: travel, salaries, entertainment, office supplies, provision for doubtful accounts, postage, utilities, rent, telephone, commissions for foreign exchange, and advertising. We reclassified these as indirect expenses because they are not tied to specific sales.

We did not make any adjustments for Nankai Seiko's claimed warehousing expenses because, although reported in the company's narrative response, these expenses were not provided on the computer tapes.

Since certain suppliers of Peer International (Peer) knew that the merchandise they sold to Peer was destined for the United States, we based USP on sales from the suppliers to Peer. Several other of Peer's suppliers did not know the ultimate destination of their sales to Peer. For these sales, we have based USP on Peer's sales to the first unrelated party in the United States.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. "In Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished

motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

In these reviews, we believe that two firms, Honda and Koyo, exported to their U.S. affiliates the classes or kinds of merchandise covered by these orders that they further manufactured into merchandise of a different class or kind prior to sale to unrelated U.S. customers. If merchandise imported by these firms constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Sales by Koyo's U.S. affiliate to purchasers outside the United States are not subject to the orders. Although the merchandise entered the United States, there was no basis for USP since these sales were not made to unrelated customers in, or for exportation to, the United States.

Foreign Market Value

Except for Showa Pillow Block, the home market was viable for all companies. The Department used home market price, third country price, or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). We compared U.S. sales with sales of such or similar merchandise in the home market or a third country. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision

rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex-factory, ex-godown, or delivered prices to the first unrelated purchasers in the home market. We disregarded sales to related parties unless the respondent provided satisfactory evidence that these sales were made at arm's length. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, differences in export inspection fees, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses.

Third country prices to Germany were used as FMV for Showa Pillow Block because the company sold insufficient quantities of the merchandise in the home market during the period of review. Third country prices were based on the packed, c.i.f. delivered price to unrelated purchasers in the third country. We made deductions, where appropriate, for Japanese inland freight, ocean freight, and marine insurance. Where applicable, we made adjustments for differences in credit expenses and differences in cost attributable to physical characteristics of the merchandise.

Izumoto Seiko identified the following indirect selling expenses as direct selling expenses: travel, salaries, entertainment, office supplies, provision for doubtful accounts, postage, utilities, rent, telephone, commissions for foreign exchange, and advertising. We reclassified these as indirect expenses because they are not tied to specific sales.

In our original questionnaire, we requested CV data from Osaka Pump for its sales of nonidentical merchandise. However, in our deficiency letter, we neglected to alert the company that it had failed to provide this information. For purposes of the preliminary results, we have based this company's margins only on sales of identical merchandise. We will request this information again for purposes of the final results of these reviews.

Takeshita's home market is viable, but the company reported sales of such or similar merchandise to Mexico without providing an adequate explanation for not reporting home market matching sales. Because the home market is viable, but it appears that there are few or no model matches in the home market, we are using CV as the basis for calculating FMV.

NSK calculated certain expenses related to sales by each of its consolidated subsidiaries on the basis of the ratio of total expenses to total cost of goods sold. These expenses include inland freight, packing, credit, advertising, and indirect selling expenses. Since the expenses should have been calculated by applying the ratio of the expenses to the sales price rather than the cost of goods sold, we recalculated these expenses to reflect the ratio of each subsidiary's expenses to its total sales. We had adequate information to recalculate these expenses only for the fiscal year April 1989 through March 1990. Therefore, for sales outside that fiscal year, we used as BIA the lowest adjustment for the various expense amounts, i.e., the lowest ratio of expenses to sales, among the subsidiaries during that fiscal year.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs and CRBs for Koyo, Nachi, NPB, NSK, and NTN. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When 10 percent or more, but less than 90 percent, of the sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV. When 90 percent or more of the sales of a particular home market model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV.

CV was used for calculating FMV if a firm made more than 90 percent of its sales of a particular model below cost or if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater, (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs and

general expenses, whichever was greater, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses

incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

For Takeshita Seiko, we disallowed any adjustment to CV for differences in direct selling expenses because the company did not provide an adequate explanation of the nature of these expenses.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988 through April 30, 1990 to be:

| Company | Margin (percent) | | |
|---|------------------|-----------------------------|--------------------------|
| | Ball bearings | Cylindrical roller bearings | Spherical plain bearings |
| Asahi Seiko..... | 106.61 | 54.77 | 92.00 |
| Fujino Iron Works..... | 3.18 | — | — |
| Honda Motor Co..... | 0.00 | 0.00 | 0.00 |
| Inoue Jikuu Kogyo (IJK)..... | 2.10 | 6.44 | (¹) |
| Isuzu Motors..... | 1.44 | 0.004 | 3.90 |
| Izumoto Seiko..... | 23.62 | — | — |
| Japanese Aero Engines Corp..... | 106.61 | 54.77 | 92.00 |
| Koyo Seiko..... | 0.49 | 0.02 | (¹) |
| Maehara/Kuroe..... | — | — | 39.91 |
| Minebea Co..... | 106.61 | — | 92.00 |
| Nachi-Fujikoshi Corp..... | 40.10 | 43.40 | (¹) |
| Nakai Bearing Co..... | 8.57 | (¹) | (¹) |
| Nankai Seiko..... | 37.11 | (¹) | (¹) |
| Nippon Pillow Block (NPB)..... | 54.54 | — | — |
| NSK..... | 10.02 | 54.77 | (¹) |
| NTN..... | 7.23 | 0.00 | 4.11 |
| Osaka Pump..... | 0.00 | — | — |
| Peer International..... | 0.08 | — | — |
| Showa Pillow Block Mfg..... | 2.79 | — | — |
| Taiki Seisakusho/Kuroe..... | — | — | 92.00 |
| Takeshita Seiko..... | 0.86 | (¹) | (¹) |
| Tottori Yamakai Bearing Seisakusho (KYK)..... | 0.16 | — | — |
| Wada Seiko..... | 54.54 | — | — |
| Yamaha Motor Co..... | 30.17 | 11.32 | 39.91 |
| Yamato Seisakusho/Kuroe..... | — | — | 92.00 |

¹ No U.S. sales during the period.
— Not subject to review.

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues, if requested, will be held on April 22, 1991 in room 4830 at 9 a.m. Any hearing on issues related solely to Japan, if requested, will be held on April 22, 1991 in room 4830 at 1 p.m. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise of antifriction bearings based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs

value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this

merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 54.54 percent for shipments of ball bearings, 54.77 percent for shipments of cylindrical roller bearings, and 39.91 percent for shipments of spherical plain bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposits requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6257 Filed 3-14-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-465-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Socialist Republic of Romania; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from the Socialist Republic of Romania. The class or kind of merchandise covered by the order is ball bearings (BBs). The review covers the sole exporter, Tehnoimportexport (TIE), and the period November 9, 1988 through April 30, 1990. As a result of the review, the Department has preliminarily determined the dumping margin for this firm to be 24.07 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Breck Richardson or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 19109) the antidumping duty order on ball bearings and parts thereof from Romania. On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firm and class or kind of merchandise:

| Name of Firm | Class or Kind |
|------------------------------|---------------|
| Tehnoimportexport (TIE)..... | BBs. |

Scope of Review

The products covered by this review are antifriction ball bearings, mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers above are provided for convenience and Customs purposes. The written description remains dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have

preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders.

For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews," published concurrently with this notice.

United States Price

In calculating United States price, the Department used purchase price (PP), as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b. price to unrelated purchasers in the United States. We made deductions for foreign inland freight and handling based on Yugoslavian surrogate information (see discussion under Foreign Market Value). No other adjustments were claimed or allowed.

Foreign Market Value

We have concluded that Romania is a nonmarket economy country for purposes of this administrative review. Given that this review was initiated subsequent to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988, which amended section 773(c) of the Tariff Act, we are required to use the constructed value based on the valuation of factors of production or prices of such or similar merchandise in a market economy country as the basis for determining foreign market value. The Tariff Act further provides that the Secretary will value the factors of production in a market economy country which is comparable in terms of economic development to the nonmarket country.

Of countries known to produce bearings, we determined that Yugoslavia, Algeria, Brazil, Malaysia, Mexico, and South Africa were comparable to Romania in stages of economic development. Questionnaires were sent to the U.S. embassies in each of these countries, but all responses received were inadequate. In the absence of usable information from the embassies, the Department resorted to use of information from publicly available sources for valuing factors of production. Of the identified surrogates, the only usable information available pertained to Yugoslavia. Therefore, we used publicly available Yugoslavian information whenever possible. Only when Yugoslavian data was unavailable or unusable, and after exhausting publicly available information from all

of the possible surrogate countries listed above, did the Department turn to publicly available information from other countries, specifically Thailand and Taiwan. These countries were chosen because they were reasonably comparable to Romania in economic development, and the information needed was publicly available and deemed to be reliable, having been verified.

We used the following information to value the factors of production:

- We based the values for steel used to manufacture the inner and outer rings (AISI 52100), balls (AISI 52100), armatures (SAE 1008), rivets (AISI A 284 gr. B), locking collars (AISI 1945), shields (SAE 1008), and cages (SAE 1008) on official Eurostat data for Yugoslavian imports of these types of steel from the European Community;

- In the absence of reliable data from the surrogate countries, we based scrap value on the Eurostat data for imports of alloy scrap steel from the European Community to Yugoslavia;

- We based labor rates on data published by the International Labour Office ("ILO") for Yugoslavia;

- We based freight costs on public rates obtained from a freight company in Yugoslavia;

- We based overhead (including depreciation, indirect material, electricity, methane gas, grease, oil, and water) and indirect labor costs on the ratio of these costs to total cost of manufacturing for a bearings company in Thailand;

- We based general expenses on the ratio of general expenses to cost of manufacturing for a bearings company in Thailand;

- We used the statutory minimum of eight percent of the sum of material costs, fabrication costs, and general expenses for profit;

- As surrogate information for U.S. packing expense, we added to constructed value packing expenses based on cost data from an antifriction bearings manufacturer in Thailand.

- Costs associated with rubber seals were based on: material and labor cost data of a company in Taiwan; overhead and general selling and administrative expenses, which were derived by using the ratios calculated for completed bearings produced by the Thailand company; and the statutory eight percent profit rate.

Currency Conversion

We made currency conversions in accordance with § 353.60(a) of the Department's regulations (19 C.F.R. 353.60(a)). Normally, we use certified exchange rates furnished by the Federal

Reserve Bank of New York, but no certified rates were available for the currencies we needed to convert (ECUs and Yugoslavian dinars). Therefore, all currency conversions were made using monthly average exchange rates published by the IMF, as best information available.

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin to be:

| Manufacturer/ exporter | Review period | Margin (percent) |
|---------------------------|-----------------|---------------------|
| Tehnoimportexport | 11/9/88-4/30/90 | 24.07 |

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues, if requested, will be on April 26, 1991 in room 3407 at 9 am. Any hearing on issues related solely to Romania, if requested, will be on April 26, 1991 in room 3407 at 1 pm. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review and the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty

based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by the reviewed company will be that established in the final results of this review; (2) The cash deposit rate for all other manufacturers/exporters shall be 24.07 percent for shipments of ball bearings. This is Tehnoimportexport's rate. The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8258 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. The class or kind of merchandise covered by this order is ball bearings. The review covers two related manufacturers/exporters for the period November 9, 1988 through April 30, 1990. As a result of this review, the

Department has preliminarily determined the dumping margin for the related firms to be 6.96 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT:

Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 20907) the antidumping duty order on ball bearings (BBs) and parts thereof from Singapore. On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firms and class or kind of merchandise:

| Name of firm | Class or kind |
|--|---------------|
| NMB Singapore Ltd. (NMB)/Pelmech Industries (Pte.) Ltd. (Pelmech). | BBs |

Since NMB and Pelmech are related companies, we are treating them as one entity for purposes of this review.

Scope of Review

The products covered by this review are antifriction ball bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of ESP transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. Because NMB/Pelmech made more than 2000 ESP sales transactions to the United States, we selected sales from only the following weeks: November 9-12, 1988, January 22-28, 1989, March 5-11, 1989, June 4-10, 1989, August 20-26, 1989, October 1-7, 1989, November 5-11, 1989, January 14-20, 1990, and March 4-10, 1990. We reviewed all PP sales transactions during the period of review because there are few PP sales.

United States price was based on the packed ex-warehouse price (for ESP sales) or f.o.b. Singapore price (for PP sales). We made deductions from both PP and ESP for foreign inland freight and discounts and rebates. We made additional deductions from ESP for ocean freight, marine insurance, U.S. freight, U.S. brokerage and handling charges, U.S. customs duties, commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

NMB/Pelmech claimed adjustments for differences in inventory carrying costs

and export selling expenses on their PP sales. We consider inventory carrying costs and export selling expenses to be indirect expenses because they cannot be tied to specific sales. Since we do not adjust PP sales prices for indirect selling expenses, we have disallowed these items.

We have excluded from our calculation of USP any bearings used as promotional samples that were provided free of charge to NMB/Pelmech's customers. We will apply the weighted-average rate from all other sales of the same class or kind of merchandise to these sales.

NMB/Pelmech made sales of BBs to an unrelated customer in a foreign trade zone, and that customer subsequently exported the BBs to a third country. Because such transactions are not U.S. sales, they are not covered by the order.

Foreign Market Value

Because the home market is viable, we used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990.

Home market prices were based on the delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, warranty, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing expenses. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP

calculations, but not to exceed the amount of those U.S. expenses.

Where NMB/Pelmac did not have contemporaneous sales of such or similar merchandise, we used CV for calculating FMV. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, where actual profit was greater than the statutory eight percent minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. This adjustment was made for differences in direct selling expenses. For comparison involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the amount of indirect selling expenses incurred for ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|-----------------|---------------------|
| NMB/Pelmac..... | 6.96 |

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830 at 9 a.m. Any hearing regarding issues which relate solely to Singapore, if requested, will be held on April 25, 1991, in room 3708 at 3 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals of written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad*

valorem appraisalment rate for antifriction bearings, based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs value of those sales. This rate will be assessed uniformly on all entries by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the U.S. Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisalment instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Singapore, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 6.96 percent for shipment of ball bearings, the rate calculated for NMB/Pelmac. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)) (1989).

Dated March 8, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6259 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Sweden; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce had conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. The classes or kinds of merchandise covered by these orders are ball bearings (BBs) and cylindrical roller bearings (CRBs). The reviews cover one manufacturer/exporter and the period November 9, 1988 through April 30, 1990. As a result of these reviews, the Department has preliminarily determined the dumping margins for the reviewed firm to be 6.93 percent for ball bearings (BBs) and 0.18 for cylindrical roller bearings (CRBs).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the *Federal Register* (54 FR 20907) the antidumping duty orders on ball bearings, cylindrical roller bearings, and parts thereof from Sweden. On June 11, 1990, in accordance with section 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the

Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

| Name of firm | Class or kind |
|--------------------|---------------|
| SKF Sverige AB | BBs CRBs |
| SKF Mekanprodukter | BBs CRBs |

Subsequent to the publication date of our notice of initiation, we found that SKF Mekanprodukter is an affiliate of SKF Sverige AB and did not manufacture or sell products to the United States that were covered by the scope of these reviews. Accordingly, we are treating SKF Sverige AB and SKF Mekanprodukter as one entity for this review, and sales by SKF Mekanprodukter will receive the rate applicable to SKF Sverige AB.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40,

8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988, January 22-28, 1989, March 5-11, 1989, June 4-10, 1989, August 20-26, 1989, October 1-7, 1989, November 5-11, 1989, January 14-20, 1990, and March 4-10, 1990.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions from ESP, where appropriate, for ocean freight, which included foreign brokerage and handling and foreign inland freight expenses, marine insurance, U.S. freight expenses for both port to warehouse and warehouse to customer, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP for U.S. repacking material and labor, commissions to unrelated parties, credit expense attributable to payment terms, inventory carrying costs, technical service expenses, direct warranty expenses, product liability expenses, export selling expenses, and indirect selling expenses. Foreign inland freight, packing labor and materials were also deducted from gross unit price. Billing adjustments, which are corrections to the unit price, were added to gross unit price.

Torrington has alleged that bearings produced in Sweden by SKF Sverige AB have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its

Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

Foreign Market Value

The home market was viable for SKF Sverige AB. The Department used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990.

Home market prices were based on the packed ex factory, ex godown, or delivered prices to the first unrelated purchasers in the home market. Billing adjustments, which are adjustments to unit price, were made to the gross unit price. Also, freight revenue, packing revenue and interest revenue from sales were added to the gross unit price. Where applicable, we made adjustments for inland freight, cash discounts, rebates, credit expenses, differences in packing and differences in physical characteristics of the merchandise. We also made adjustments for indirect selling expenses in the home market to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Because we found that SKF sold ball bearings below the cost of production in the less than fair value (LTFV) investigation, and because we received an adequate allegation that SKF Sverige was selling cylindrical bearings in the home market at prices below the cost of production, we initiated cost

investigations. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular home market model were determined to be below the cost of production, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in direct selling expenses. We made a further deduction for indirect selling expenses, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|---|---------------------|
| Ball Bearings, SKF Sverige AB | 6.93 |
| Cylindrical Roller Bearings, SKF Sverige AB | 0.18 |

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to Sweden, if requested, will be held on April 24, 1991, in room 3407, at 10 a.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results

of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total amount of dumping duties calculated for the sales examined during the review period to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all subject units included in each entry made by the particular importer during the period of review. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for SKF Sverige AB will be that established in the final results of this review; (2) the cash deposit rate for all other exporters/producers shall be 6.93 percent for shipments of ball bearings and 0.18 percent for CRBs. These are SKF Sverige AB's rates. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Department's Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6260 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-549-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on antifriction bearings other than tapered roller bearings) and parts thereof from Thailand. The class or kind of merchandise covered by this order is ball bearings. The review covers two related manufacturers/exporters for the period November 9, 1988 through April 30, 1990. As a result of this review, the Department has preliminarily determined the dumping margin for the two firms to be 0.65 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the *Federal Register* (54 FR 20909) the antidumping duty order on ball bearings (BBs) and parts thereof from Thailand. On June 11, 1990, in accordance with section 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is not conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firms and class or kind of merchandise:

| Name of firm | Class or kind |
|--|---------------|
| NMB Thai Ltd. (NMB)/Pelmech Thai Ltd. (Pelmech). | BBs |

Since NMB and Pelmech are related companies, we are treating them as one entity for purposes of this review.

Scope of Review

The products covered by this review are antifriction ball bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review," published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of ESP transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. Because NMB/Pelmech made more than 2000 ESP sales transactions to the United States, we selected sales from only the following weeks: November 9-12, 1988, January 22-28, 1989, March 5-11, 1989, June 4-10, 1989, August 20-26, 1989, October 1-7, 1989, November 5-11, 1989, January 14-20, 1990, and March 4-10, 1990. We reviewed all PP sales transactions during the period of review because there were few PP sales.

United States price was based on the packed ex-warehouse price (for ESP sales) or f.o.b. Singapore price (for PP sales). We made deductions from both PP and ESP for foreign inland freight and discounts and rebates. We made additional deductions from ESP for ocean freight, marine insurance, U.S. freight, U.S. brokerage and handling charges, U.S. customs duties, commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repackaging in the United States, and indirect selling expenses.

NMB/Pelmech claimed adjustments for differences in inventory carrying costs and export selling expenses on their PP sales. We consider inventory carrying costs and export selling expenses to be indirect expenses because they cannot be tied to specific sales. Since we do not adjust PP sales prices for indirect selling expenses, we have disallowed these items.

We have excluded from our calculation of USP any bearings used as promotional samples that were provided free of charge to NMB/Pelmech's customers. We will apply the weighted-average rate from all other sales of the same class or kind of merchandise to these sales.

NMB/Pelmech made sales of BBs to an unrelated customer in a foreign trade zone, and that customer subsequently exported the BBs to a third country. Because such transactions are not U.S. sales, they are not covered by the order.

Foreign Market Value

Because the home market is viable, we used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a

bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990.

Because we found below-cost sales of BBs in the investigation of sales at less than fair value (LTFV) for NMB/Pelmech, we initiated a cost investigation. Home market prices used for the cost test were based on the f.o.b. Singapore price. Where applicable, we made adjustments for inland freight. As a result of our investigation, we found no sales below the cost of production. Where NMB/Pelmech did not have contemporaneous sales of such or similar merchandise, we used CV for FMV.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, because actual profit was greater than the statutory eight percent minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. This adjustment was made for differences in direct selling expenses. For comparisons involving ESP transactions, we made further deduction for indirect selling expenses incurred in the home market, capped by the amount of indirect selling expenses incurred for ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (Percent) |
|------------------|---------------------|
| NMB/Pelmec | 0.65 |

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing regarding issues which relate solely to Thailand, if requested, will be held on April 25, 1991 in room 3708 at 12:30 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling precludes us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for antifriction bearings, based on the ratio of the total value of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the U.S. Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all

shipments of the subject merchandise from Thailand, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 0.65 percent for shipments of ball bearings, the rate calculated for NMB/Pelmec. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)) (1989).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6261 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

A-412-801

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administration Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof and cylindrical roller bearings, (CRBs) and parts thereof. The reviews cover ten manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Although we initiated reviews for 3 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 54.27 percent for ball bearings, and from zero to 22.52 for cylindrical roller bearings.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF), Laurel M. Lynn (Barden, Cooper, Pratt & Whitney, Rolls Royce), Thomas A. McGinty (Dowty Rotol, Fiat Aviazione, S.p.A.), Edmond A. O'Neill (FAG UK), or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130 or 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 20910) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), and parts thereof from the United Kingdom. On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

We initiated reviews with respect to the following firms and classes or kinds of merchandise:

| Name of firm | Class or kind |
|---|---------------|
| AMPEC, Plc..... | ALL |
| Dowty Boulton Paul, Ltd..... | BBs, CRBs |
| The Torrington Company (U.K.), Ltd..... | BBs, CRBs |

Subsequent to the publication date of our notice of initiation of these reviews, we received timely withdrawals of review requests for the above firms. Because there were no other requests from any other interested parties for these companies, we are terminating these reviews with respect to the above companies, in accordance with 19 CFR 353.22(a)(5).

In addition, SNFA Bearings, Ltd. had no sales of bearings subject to the antidumping order during the review

period. This firm will receive the rate for all other manufacturers/exporters indicated in this notice.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were Pratt & Whitney Canada, Inc., and Rolls Royce.

Best Information Available

In accordance with section 776(b) of the Tariff Act, we have preliminarily determined that the use of best information available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

For certain companies, we used BIA for shipping expenses because certain sales occurred within the period of review, but shipments took place after the date of the questionnaire response. The average shipping expenses from other sales made during the period of review were used as BIA.

Rolls Royce did not submit data for United Kingdom inland freight for home market, PP, and ESP transactions. It also did not respond fully to the questionnaire regarding sales of AFBs by its subsidiary, Northern Engineering, Inc., nor did it submit complete data on its sales of AFBs as spare parts. We used the highest margin from the original fair value investigation for these particular sales.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and

constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative

Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988; January 22-28, 1989; November 5-11, 1989; January 14-20, 1990; and March 4-10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate from both PP and ESP for foreign inland presale freight, ocean freight, marine insurance, U.S. and foreign inland freight, U.S. and foreign inland insurance, U.S. and foreign brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP for commissions to unrelated parties, credit expense attributable to payment terms, warranty & technical service expenses, advertising and sales promotion expenses, repacking in the United States, inventory carrying costs, and indirect selling expenses. For companies that engaged in currency hedging during the period of review, we adjusted USP to reflect the actual value of currency received.

Fiat Aviazione, S.p.A. cosigned merchandise to unrelated U.S. firms, which set the price and sold the merchandise after importation into the United States. The company claims that these are PP sales. However, because the sales occurred after importation, we consider them to be ESP transactions.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the

scope of the antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not comprise a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

If subject bearings imported by any firm constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise than bearings when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

We also excluded from our calculation of United States price (but not from these orders) replacement bearings for defective products, and bearings used as promotional samples which were given to customers free of charge.

We have excluded from our calculations of United States price sales of bearings by FAG and Rolfs Royce to the U.S. government for military/defense procurement. These sales are excluded because they were made pursuant to a Memorandum of Understanding between the United

Kingdom and the United States regarding military purchases, in accordance with section 1335 of the Omnibus Trade and Competitiveness Act of 1988.

Torrington, the petitioner, has alleged that bearings produced in the U.K. by SKF UK have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF has submitted an incomplete response.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney Canada, Inc., which sells U.K.-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that Canada is the appropriate home market for sales of U.K.-origin bearings sold by Pratt & Whitney Canada, Inc.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we

sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also requested sales information for October of 1988 and May of 1990.

Home market prices were based on the packed ex-factory, or delivered prices to the first unrelated purchasers in the home market. We disregarded sales to related parties unless the respondent provided satisfactory evidence that these sales were made at arm's length. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but exceeding the amount of those U.S. commissions or indirect selling expenses.

The Department initiated cost investigations for ball bearings sold by both SKF-UK and RHP (UK), Ltd., because these firms were found to have made home market sales below cost in the fair value investigation. As a result of our investigations, we found below-cost sales. When less than 10 percent of the sales of a particular model were below cost, we did not disregard any sales of that model and made normal price-to-price comparisons. When 90 percent or more of the sales of a particular model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV. When more than 10 percent, but less than 90 percent of the sales of a particular model were determined to be below the cost of production, we excluded all sales which were determined to be below the cost of production.

CV was used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater, (2) actual profit or the statutory minimum of 8 percent when the profit exceeded the statutory of materials, fabrication costs, and general

expenses, whichever was greater, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made further deductions to CV for indirect selling expenses and inventory carrying costs in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

We preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|-------------------------------------|---------------------|
| Ball Bearings: | |
| Barden..... | 8.82 |
| Cooper Bearings, Ltd..... | 0.00 |
| Dowty Rotol, Ltd..... | 11.81 |
| FAG UK..... | 23.09 |
| Fiat Aviazione, S.p.A..... | 54.27 |
| Pratt & Whitney Canada, Inc..... | 4.01 |
| RHP Bearings, Ltd..... | 39.37 |
| Rolls Royce..... | 3.78 |
| SKF-UK..... | 4.97 |
| SNFA Bearings, Ltd..... | 54.27 |
| Cylindrical Roller Bearings: | |
| Cooper Bearings, Ltd..... | 0.00 |
| Dowty Rotol, Ltd..... | 2.41 |
| FAG UK..... | 0.00 |
| Fiat Aviazione, S.p.A..... | 22.52 |
| Pratt & Whitney Canada, Inc..... | 2.40 |
| RHP Bearings, Ltd..... | 16.99 |
| Rolls Royce..... | 1.77 |
| SKF-UK..... | No Sales |

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues if requested, will be on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to the United Kingdom will be held on April 23, 1991, in room 3407, at 2 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate

entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisal rate for each class or kind of merchandise of antifriction bearings, based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review and the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs values to calculate an *ad valorem* rate, we will calculate a per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 39.37 percent for shipments of ball bearings and 22.52 percent for shipments of cylindrical roller bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C.

1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6262 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany. The Classes or kinds of merchandise covered by these orders are ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs). The reviews cover 13 manufacturers/exporters and the period November 9, 1988 through April 30, 1990. Although we initiated reviews for 5 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 48.79 percent for BBs, from zero to 14.22 percent for CRBs, and from zero to 118.98 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Messerschmitt-Boelkow-Blohm GmbH, Heidelberg Druckmaschinen, AG), Dionne C. Calloway (NTN Kugellagerfabrik (Deutschland) GmbH), J. David Dirstine (SKF GmbH, SKF Gleitlager GmbH, SKF Textilmaschinen-Komponenten GmbH, Georg Mueller Nurnberg AG), Laurel M. Lynn (Pratt & Whitney Canada, Inc.), Edmond A. O'Neill (FAG Kugelfischer Georg Schaefer KGaA), Thomas A.

McGinty (Fiat Aviazione S.P.A.), Maureen C. McPhillips (INA Walzlager Schaeffler KG), Breck J. Richardson (Gebrüder Reinfurt GmbH & Co. Kg., Neuweg Fertigung GmbH, Zahnradfabrik Friedrichshafen AG), or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the *Federal Register* (54 FR 20900) the antidumping duty orders on ball bearings, cylindrical roller bearings and spherical plain bearings and parts thereof from the Federal Republic of Germany. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

| Name of firm | Class or kind |
|---|---------------|
| FAG Kugelfischer Georg Schaeffler KGaA (FAG) | All. |
| Feinmechanische Werk GmbH | All. |
| Fiat Aviazione S.p.A. (FiatAvio) | BBs & CRBs. |
| Frankenjura Industrie GmbH | All. |
| Gebrüder Reinfurt GmbH & Co. Kg. (GRW) | BBs. |
| Georg Mueller Nurnberg, AG (GMN) | All. |
| Heidelberg Druckmaschinen, AG (HD) | All. |
| Henschel Flugzeug-Werke GmbH | All. |
| INA Walzlager Schaeffler KG (INA) | All. |
| MAN GHF Corporation | BBs & CRBs. |
| Messerschmitt-Boelkow-Blohm GmbH (MBB) | All. |
| Neuweg Fertigung GmbH (NWG) | BBs. |
| NMB Bearings GmbH | All. |
| Normenstelle Luftfahrt | All. |
| NTN Kugellagerfabrik (Deutschland) GmbH (NTN) | All. |
| Pratt & Whitney Canada, Inc. | All. |
| SKF GmbH, SKF Gleitlager GmbH, SKF Textilmaschinen-Komponenten GmbH (SKF) | All. |
| Zahnradfabrik Friedrichshafen AG (ZF) | All. |

Subsequent to the publication date of our notice of initiation of these reviews, we received timely withdrawal requests for Feinmechanische Werke GmbH, Frankenjura Industrie GmbH, MAN GHF Corporation, NMB Bearings GmbH, and Normenstelle Luftfahrt.

Because there were no other requests from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

Subsequent to initiation, we found that Henschel Flugzeug-Werke GmbH is wholly owned by MBB and did not have sales to the United States. We are treating Henschel and MBB as one entity for this review, and sales by Henschel to the United States will receive the rate applicable to MBB.

Subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation, to review all of its imports of BBs and CRBs from the United Kingdom. The clarification request covered Dowty Rotol Ltd., a British-based reseller of BBs and CRBs produced not only in the United Kingdom, but in Germany as well. Dowty Aerospace informed us that its review request was intended to include all imports from Dowty Rotol of BBs, and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed German made BBs and CRBs sold by Dowty Rotol Corp., from the United Kingdom to the United States.

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were HD, Pratt & Whitney, and MBB. We are allowing ZF to use the price list option for its purchase price (PP) sales.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these

reviews. For missing data, we applied BIA on a case-by-case basis, generally using ranged, publically available data from another company.

ZF did not fully respond to the Department's questionnaire regarding exporter's sales price (ESP) transactions. For this firm we used the highest calculated margin in the final determination of the LTFV investigation as BIA for those ESP sales.

FiatAvio reported its sales to the United States as PP transactions. Because most of the sales in question occurred after importation of the product into the United States, we consider the majority of this company's sales to be ESP transactions. Therefore, FiatAvio's margins were calculated, largely, on an ESP basis.

Scope of Reviews

The products covered by these reviews are antifriction bearings (AFBs) (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 84.82.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof.* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof.* These products include all

spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that the following products are within the scope of the orders: (1) Load and thrust rollers; (2) chain sheaves; and (3) conveyor system trolley wheels and chain wheels. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used PP or ESP, both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9-12, 1988, January 22-28, 1989, March 5-11, 1989, June 4-10, 1989, August 20-26, 1989, October 1-7, 1989, November 5-11, 1989, January 14-20, 1990, and March 4-10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for ocean freight, marine insurance, U.S. and foreign inland freight, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates.

We made additional deductions from ESP for commissions to unrelated parties, credit expenses, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

One company, NTN, reported less than 2,000 ESP sales in its section A response. Therefore, our section B questionnaire did not instruct the company to sample. However, the company's section B response indicated that there were more than 2,000 ESP sales during the period of review. Because the company reported all sales, and because its total sales transactions were not significantly higher than 2,000, we have based our analysis on this company's total sales.

Torrington, the petitioner, has alleged that bearings produced in Germany by SKF Sverige AB have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (48 FR

51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

In these reviews, we believe that two firms, MBB and Heidelberg, exported to their U.S. affiliates the classes or kinds of merchandise covered by these orders that they incorporated into merchandise of a different class or kind prior to sale to unrelated U.S. customers. If subject bearings imported by these firms constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney, which sells German-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing

FMV. Using these criteria, we find that Canada is the appropriate home market for sales of German-origin AFBs by Pratt & Whitney.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed ex factory or delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, freight revenue, packing revenue, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions (in PP and ESP calculations) and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained information for the months of October 1988 and May 1990.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs, SPBs, and CRBs, from SKF, GMN, FAG, and INA. As a result of our investigation, we found below-cost sales. When less than 10 percent of the home market sales were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent, of the home market sales of a particular model were determined to be below cost, we

excluded the below-cost home market sales from our calculation of FMV.

When more than 90 percent of the sales of a particular home market model were determined to be below cost, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise or if more than 90 percent of its sales were below cost. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, when these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, when actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States. We made circumstance of sale adjustments for all direct selling expenses in accordance with 19 CFR 353.56. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

| | Margin (percent) |
|--|---------------------|
| Ball bearings: | |
| Dowty Rotol..... | 0.00 |
| FAG Kugelfischer Georg Schaefer KGaA (FAG)..... | 48.79 |
| Fiat Aviazione S.p.A. (FiatAvio)..... | 12.86 |
| Gebrüder Reinfurt GmbH & Co. Kg. (GRW)..... | 3.82 |
| Georg Mueller Nurnberg, AG (GMN)..... | 2.44 |
| Heidelberg Druckmaschinen, AG (HD)..... | 0.00 |
| INA Walzlager Schaeffler KG (INA)..... | 7.08 |
| Messerschmitt-Boelkow-Blohm GmbH (MBB)..... | 0.00 |
| Neueg Fertigung GmbH (NWG)..... | 0.42 |
| NTN Kugellagerfabrik (Deutschland) GmbH (NTN)..... | 43.51 |
| Pratt & Whitney Canada, Inc. SKF GmbH, SKF Gleitlager GmbH, SKF Textil-maschinen-Komponenten GmbH (SKF)..... | 5.68 |
| Zahnradfabrik Friedrichshafen AG (ZF)..... | 3.93 |
| Cylindrical roller bearings: | 20.53 |
| FAG..... | 10.51 |
| FiatAvio..... | 10.65 |
| HD..... | 0.00 |
| INA..... | 7.54 |
| MBB..... | 0.00 |
| Pratt & Whitney Canada, Inc. SKF..... | 4.00 |
| SKF..... | 13.61 |
| ZF..... | 14.22 |
| Spherical plain bearings: | |
| FAG..... | 5.13 |

| | Margin (percent) |
|----------|---------------------|
| HD..... | 0.00 |
| MBB..... | 0.00 |
| SKF..... | 0.59 |
| ZF..... | 118.98 |

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 am. Any hearing regarding issues related solely to Germany, if requested, will be held on April 26, 1991, in room 4830, at 1 pm.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of antifriction bearings based on the ratio of the total value of dumping duties calculated for the examined sales made during the review period to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions

directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of these reviews; for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination of sales at less than fair value (the original investigation), the cash deposit rate will continue to be the rate published in that final determination; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 48.79 percent for shipments of ball bearings, and 5.13 percent for shipments of spherical plain bearings and 13.61 for CRBs. These are the highest non-BIA rates for any firms included in these reviews. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(v)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-6263 Filed 3-14-91; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Steller (Northern) Sea Lion

AGENCY: National Marine Fisheries
Service, NOAA, Commerce.

ACTION: Notice of availability and
request for comments.

SUMMARY: The draft Recovery Plan for

the Steller (northern) sea lion (*Eumetopias jubatus*) is available for review and comment by interested parties prior to preparing the final plan for approval and adoption by the National Marine Fisheries Service (NMFS). The plan was developed by the Steller Sea Lion Recovery Team which was appointed in 1990 by NMFS. The Recovery team consists of pinniped scientists and fisheries scientists and individuals knowledgeable in fisheries matters in the North Pacific Ocean.

DATES: Comments on the draft recovery plan must be received on or before April 29, 1991.

ADDRESSES: Comments should be addressed to Steller Sea Lion Recovery Programs, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the Draft Steller Sea Lion Recovery Plan are available upon request from Charles Karnella, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 8256, Silver Spring, MD 20910, or Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT:
Charles Karnella (301) 427-2322 or
Steven Zimmerman (907) 586-7235.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS appointed a Steller Sea Lion Recovery Team to assist in the development of the Draft Recovery Plan. The Draft Recovery Plan discusses the natural history, current status of the species, and the known and potential human impacts on the species. Actions that would promote the recovery of the Steller sea lion are identified and discussed in the draft plan. The Recovery Plan will be used to direct U.S. activities to promote the recovery of this threatened species.

Dated: March 11, 1991.

Nancy Foster,
Director, Office of Protected Resources.

[FR Doc. 91-6133 Filed 3-14-91; 8:45 am]
BILLING CODE 3510-22-M

Public Hearing on the Draft Environmental Impact Statement and Draft Management Plan for the Proposed Ashepoo-Combahee-Edisto (ACE) Basin National Research Reserve in South Carolina

AGENCY: Sanctuaries and Reserves
Division, Office of Ocean and Coastal
Resource Management, National Ocean
Service, National Oceanic and
Atmospheric Administration, U.S.
Department of Commerce.

ACTION: Public hearing notice.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve in South Carolina. The DEIS and Draft Management Plan addresses research, monitoring, education and resource protection needs for the proposed reserve.

The Office of Ocean and Coastal Resource Management will hold a public hearing at 7 pm on Wednesday, April 3, 1991 in the Colleton County Council Chambers, Old Jail Building, at Jefferies Boulevard, in Walterboro, South Carolina 29448.

The views of interested persons and organizations on the adequacy of the DEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Draft Management Plan.

The comment period for the DEIS/DMP will end on Monday, April 15, 1991. All written comments received by this deadline will be included in the FEIS.

FOR FURTHER INFORMATION CONTACT:
Cheryl A. Graham, (202) 673-5122,
Sanctuaries and Reserves Division,
Office of Ocean and Coastal Resource
Management, National Ocean Service,
NOAA, 1825 Connecticut Avenue, NW.,
room 714, Washington, DC 20235. Copies

of the Draft Environmental Impact Statement/ Draft Management Plan are available upon request to the Sanctuaries and Reserves Division.

[Federal Domestic Assistance Catalog, Number 11.420 Coastal Zone Management Estuarine Sanctuaries]

Dated: March 4, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-6045 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Issuance of Permit; John G. Shedd Aquarium (P396C)

On December 26, 1990, notice was published in the Federal Register (55 FR 53033) that an application had been filed by the John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois 60605, for a permit to obtain six (6) captive born or beached/stranded harbor seals (*Phoca vitulina*) for public display.

Notice is hereby given that on March 8, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that the Shedd Aquarium offers an acceptable program for education or conservation purposes. The Shedd facilities are open to the public on a regular scheduled basis and access to the facilities is not limited or restricted other than by the changing of an admission fee.

The permit is available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/526-6150) and;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South

Ferry Street, Terminal Island, California 90731 (213/514-6196).

Dated: March 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-6134 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 28, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 53329) of proposed additions to the Procurement List.

Comments were received during the development phase of this proposed addition to the Procurement List from one of the current contractors for these items, both directly and through two Congressmen. The contractor claimed that the proposed addition to the Procurement List would have a highly negative impact on its sales. The contractor noted that these items have previously been set aside for small business and claimed the proposed addition would harm small business generally by reducing its share of Government contracting. The contractor claimed that the work is not suitable for nonprofit agencies employing persons with severe disabilities because it is not labor intensive, would be difficult for persons who are blind or have other severe disabilities to perform, and requires a great deal of capital to acquire the necessary production machinery. He questioned the wisdom of such expenditures when he already has the equipment and systems to produce the items.

The Committee has considered the contractor's various comments in

reaching its decision on the proposed addition. With respect to the potential impact on the contractor, the Committee noted the relatively small percentage of the contractor's sales represented by that portion of the labels for which the contractor has a current contract. Lacking other data to demonstrate the contractor's dependence upon these items, the Committee does not regard the loss of the ability to bid upon them as a serious threat to the firm's survival.

In considering the contractor's comments about the loss of opportunity for small businesses, the Committee took into account the fact that most nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program essentially differ from small businesses only in their profit status. Both are considered "small entities" in the Regulatory Flexibility Act, for example, and both are similar in size, productive capacity, and the types of commodities and services they can furnish to the Government. Yet nonprofit agencies participating in the JWOD Program receive less than 2 percent of the Federal contract dollars awarded to small businesses. Given these similarities and the much greater percentage of Federal dollars going to small businesses, the Committee does not view the loss of opportunity for small business to bid on the labels in question as justification for rejecting the proposed addition and preventing the generation of employment for blind persons.

With respect to the other points raised by the contractor, the Committee considered the findings from on-site inspections by the contracting agency and the central nonprofit agency in determining that the nonprofit agency proposing to provide the labels to the Federal Government is capable of doing so. The Committee also considered information on the number of jobs for blind persons expected to be created as a result of the proposed addition and has determined that the number is sufficient to justify adding the labels to the Procurement List. The nature of the JWOD Program is such that, to be capable of furnishing commodities and services to the Government, nonprofit agencies often have to buy equipment which private contractors already possess. The Committee does not regard this circumstance, which is inherent in the Program, as a reason not to add an item to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified workshop to produce the commodities at a fair market price and impact of the additions on the current or

most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on any contractors for the commodities listed.
- c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Label, Pressure-Sensitive Adhesive

7530-00-054-1575
7530-00-577-4368
7530-00-577-4369
7530-00-577-4370
7530-00-577-4371
7530-00-577-4372
7530-00-577-4373
7530-00-577-4374
7530-00-577-4375
7530-00-577-4376
7530-00-082-2663
7530-00-007-2165
7530-00-982-0062
7530-00-982-0064
7530-00-982-0065
7530-00-982-0066

This action does not affect contracts awarded prior the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-6225 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 26, November 18 and 30, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 43157, 47905 and 49677) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified workshop to produce the commodities at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on any contractors for the commodities listed.
- c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Rod, Straight, Headless, 5340-01-102-4539
Patient Utility Kit, 6530-01-166-3499
Wrapper, Sterilization, 6530-01-036-0398

This action does not affect contracts awarded prior the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-6226 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite

1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to the Procurement List:

Line, Multi-Loop, 1670-01-063-7760
Flat Trays and Lids, P.S. Item No. 1257T,
P.S. Item No. 1257L

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-6227 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Advisory Committee

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on March 26, 1991.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on March 26, 1991 the committee will discuss the status of the Architecture Integration Study.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C., app II (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: March 12, 1991.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 91-6194 Filed 3-14-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency**Privacy Act of 1974; System of Records.**

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend five and delete two record system notices.

SUMMARY: The Defense Logistics Agency proposes to amend five existing record systems and delete two from the DLA inventory. The specific changes to the notices are administrative in nature and stem from a consolidation of organizational functions and resultant name changes. The deletions are a result of changes in information requirements.

DATES: The deletions and amendments will be effective without further notice on April 15, 1991.

ADDRESSES: Ms. Susan Salus, Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304-6100. Telephone (703) 274-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
 50 FR 51898, Dec. 20, 1985
 51 FR 27443, Jul. 31, 1986
 51 FR 30104, Aug. 22, 1986
 52 FR 35304, Sep. 18, 1987
 52 FR 37495, Oct. 7, 1987
 53 FR 04442, Feb. 16, 1988
 53 FR 09965, Mar. 28, 1988
 53 FR 21511, Jun. 8, 1988
 53 FR 26105, Jul. 11, 1988
 53 FR 32091, Aug. 23, 1988
 53 FR 39129, Oct. 5, 1988
 53 FR 44937, Nov. 7, 1988
 53 FR 48708, Dec. 2, 1988
 54 FR 11997, Mar. 23, 1989
 55 FR 21918, May 30, 1990 (DLA Address Directory)
 55 FR 32284, Aug. 8, 1990
 55 FR 32947, Aug. 13, 1990
 55 FR 34050, Aug. 21, 1990
 55 FR 42755, Oct. 23, 1990

The deletions and amendments are not within the purview of subsection (r) of the Privacy Act, as amended (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the records systems being amended are set forth below, followed by the record system notices, as amended, published in their entirety.

Dated: March 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS**SYSTEM IDENTIFICATION AND NAME:**

S336.10DCRS-F, Personnel Cost Forecast System (50 FR 22925, May 29, 1985).

REASON:

System is no longer required.

SYSTEM IDENTIFICATION AND NAME:

S850.10DLA-Q 1, Quality Assurance Activity Certification Report (50 FR 22940, May 29, 1985).

Reason: System is no longer required.

S431.15DLA-C

System name:

Travel Record (50 FR 22934, May 29, 1985).

Changes:

* * * * *

System location:

Delete "Defense Contract Administration Service Regions (DCASRs)" in lines three and four and replace with "Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S431.15DLA-C**SYSTEM NAME:**

Travel Record.

SYSTEM LOCATION:

Records are maintained at all Defense Logistics Agency (DLA) Centers, Depots, and Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees, civilian and military, who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS) for DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of copies of request and authorization for TDY travel of DoD

personnel, request and authorization for DoD civilian permanent duty travel, travel voucher, travel voucher or subvoucher, claim for reimbursement for expenditures on official business and records of travel payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 5F, Title 5 United States Code and Executive Order 9397.

PURPOSE(S):

The file is used by the Accounting and Finance Officer to administer his disbursing and accounting duties for government travel performed by both military and civilian employees under his administrative control. Data is also used by Counsel to determine that expenses of the sale or purchase of the residence for a PCS are reasonable and customary to the locality of the transaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in an area that is accessible to office personnel only.

RETENTION AND DISPOSAL:

Records of military personnel are maintained until separation or transfer of the military members. Records of civilian personnel are destroyed one year after termination of their employment.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary

Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

Written requests for information must contain the full name and social security number of the employee. Employees making a personal request must present identification; i.e., employee badge, drivers license, etc.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Request for travel forms, travel vouchers, claims for reimbursement.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S434.15DLA-C

SYSTEM NAME:

Automated Payroll Cost and Personnel System (APCAPS) (50 FR 22934, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete "Defense Contract Management Regions (DCMRs)" in lines three and four and replace with "Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S434.15DLA-C

SYSTEM NAME:

Automated Payroll Cost and Personnel System (APCAPS).

SYSTEM LOCATION:

Records maintained at Defense Logistics Agency (DLA) Centers, Depots, and Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian and military personnel who have been paid or costed by APCAPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in manual and mechanical files and contain all data which affect an employee's pay, deductions, employer contributions, leave, retirement, position status, or cost accumulation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; DoD Directive 5105.22; and Executive Order 9397.

PURPOSE(S):

Information is used in preparing payrolls, cost and manpower reports. Information is used by:

Agency supervisors and managers to determine leave usage, manpower allocations and labor distribution.

Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from APCAPS to determine leave usage, manpower allocations, labor distributions and costs.

Payroll offices to compute and control payroll and allocate labor costs.

Personnel offices to determine leave usage and changes that affect an employee's pay.

Security offices to determine location of employees.

Disbursing offices to determine the distribution of checks and bonds.

Law Enforcement/Security Personnel, officials designated by the Head, Primary Level Field Activity (PLFA) or by regulation to perform law enforcement, safety, and vehicle registration/parking duties. Only the shift number (if an individual works shift work) will be accessed and used from APCAPS. The information will be used as a control to ensure the integrity of information in systems S161.30DLA-I and S161.50DLA-I and to facilitate the auditing of such file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Financial Institutions to determine disposition of net pay or allotments pay.

Treasury Department to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations to determine participation in those organizations.

Office of Personnel Management to determine status of employee and for disposition of retirement records.

State and local taxing authorities to determine tax liability.

Nongovernment organizations to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation to process employee disability claims.

State employment offices to submit data for unemployment compensation.

Local courts to determine the withholding of pay for garnishment of wages.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

RETRIEVABILITY:

Hard copy documents are filed by payroll block or alphabetically by last name. Data stored on mechanized storage devices are retrieved by Social Security Number.

SAFEGUARDS:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel. Security/Law Enforcement personnel who access APCAPS information through computer terminals (used as control for the integrity of information in S161.30DLA-I and S161.50DLA-I) have been cleared with an official need. The information accessed from APCAPS is limited to the items and uses under Routine Uses and is password protected in the automated system.

RETENTION AND DISPOSAL:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

SYSTEM MANAGER(S) AND ADDRESSES:

Comptroller, Defense Logistics Agency. Official mailing addresses are

published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to or make a personal visit to Chief, Payroll Branch, Accounting and Finance Division, Office of Comptroller at each DLA Center and Depot. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Chief, Payroll Branch, Accounting and Finance Division, Office of Comptroller at each DLA Center and Depot. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

Written requests must contain full name and Social Security Number of the employee. Employees making a personal request must present identification.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee's supervisors, civilian personnel office, military personnel office, financial institutions, local courts, military services or other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S434.15DLA-KP

System name:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem (50 FR 22935, May 29, 1985).

Changes:

* * *

System location:

Delete entry and replace with "Offices of Civilian Personnel at Defense Construction Supply Center (DCSC); Defense Electronics Supply Center (DESC); Defense General Supply Center (DGSC); Defense Personnel Support Center (DPSC); Defense Reutilization and Marketing Service (DRMS); Defense

Depot Memphis (DDMT); Defense Depot Ogden (DDOU); Defense Distribution Region West (DDRW); Defense Depot Mechanicsburg (DDMP); Defense Logistics Agency Administrative Support Center (DASC); Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

* * *

S434.15DLA-KP

SYSTEM NAME:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem.

SYSTEM LOCATION:

Offices of Civilian Personnel at Defense Construction Supply Center (DCSC); Defense Electronics Supply Center (DESC); Defense General Supply Center (DGSC); Defense Personnel Support Center (DPSC); Defense Reutilization and Marketing Service (DRMS); Defense Depot Memphis (DDMT); Defense Depot Ogden (DDOU); Defense Distribution Region West (DDRW); Defense Depot Mechanicsburg (DDMP); Defense Logistics Agency Administrative Support Center (DASC); Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees serviced by the Office of Civilian Personnel at the activities listed under System Location and other Department of Defense civilian employees who are both serviced by the Offices of Civilian Personnel and paid by the activities listed under System Location above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee data segment of APCAPS data bank, including data being manually collected prior to implementation of the automated record system. For the civilian personnel segment of APCAPS, the employee data segment of the APCAPS data bank contains, for civilian employees, current personnel data on employment status and selected personal data, such as Social Security Number (SSN), name, sex, race and national origin identification, date of birth, age,

physical handicap, Government insurance, military reserve status, retired military status, education, status preceding employment with DLA, U.S. citizenship, and veterans preference.

Position data segment of APCAPS data bank. For the civilian personnel segment of APCAPS, the position data segments of the APCAPS data bank contains position data pertinent to established positions, both those positions occupied by a civilian employee as well as those not so occupied.

Personnel History File. The personnel history file contains a profile of selected civilian employee personnel data as of the most recent transaction processed against it, as well as a chronological extract of all prior transactions processed on the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302; Executive Orders 9397 and 10561; and Federal Personnel Manual, Chapters 290 and 293.

PURPOSE(S):

Purposes of the system are to affect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration.

Officials designated by the Head, PLFA and by regulation to perform law enforcement, safety, and vehicle registration/parking duties. Only the following information will be accessed and used by these individuals. Individual's name, address, directorate and office which assigned, grade, and category (military or civilian). (The information will be used as a control to ensure the integrity of information in systems of record S161.30DLA-I and S161.50DLA-I and to facilitate an audit of such file.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to prospective employers for employment determination purposes.

To credit firms for verification of data for credit determination purposes.

To taxing authorities for tax administration purposes.

To officials of other Executive Branch agencies, such as the Office of Personnel Management for performance of official duties.

To officials of Legislative Branch agencies, such as Congressmen for performance of official duties.

To officials of Judicial Branch activities, such as courts for performance of official duties.

To hospitals, medical offices and institutions for medical/hospital administration purposes.

To executor or administrator of the estate of a deceased employee, former employee, or annuitant, or next-of-kin for estate settlement purposes.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes or discs, computer paper printouts. Paper records in file folders.

RETRIEVABILITY:

Information identified to a specific civilian employee is accessed and retrieved by Social Security Number.

SAFEGUARDS:

Records are either secured in locked storage or file cabinets or kept under the constant observation of personnel office officials during duty hours. During nonduty hours, records are either secured in locked storage or file cabinets; the records file area is locked, and the building in which the records are stored is protected by building security guard. If the records area is not protected by security guards, all records must be kept in locked storage. Individually identifiable personnel documents will either be handcarried or will be transmitted in envelopes addressed to a specific office or individual and marked to be opened by addressee only. Magnetic tapes and discs are kept in the computer room which is itself a security container with locked door and access limited to persons appropriately cleared and identified. Tapes and disc packs are stored in a tape library when not used in processing, and are logged in and out only to cleared personnel with an official need. Reports with individual appropriately cleared and maintain continuous observation of reports during all processing phases. Individual requesting information must identify themselves and their relationship to the individual upon whom the record information is being requested. Individual other than the individual of record must specify what information is requested and the purpose for which it would be used if disclosed. Personnel office official determines if request is reasonable and consistent with

provisions of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a). In order to prevent unauthorized modifications of records contents, original records documents may only be reviewed in the presence of a witness designated by the Personnel Office.

Physical access, that is the ability to obtain the record, is limited to Personnel office officials; Office of Personnel Management officials; data processing officials; supervisors for those records for which they are authorized to maintain; security/law enforcement personnel who access APCAPS information through computer terminals (used as control for the integrity of information in S161.30DLA-I and S161.50DLA-I) have been cleared and must have an official need-to-know. The information accessed from APCAPS is limited to the items and uses under Routine Uses and is password protected in the automated system.

Responsible officials are granted temporary custody of an original record in order to monitor the review of the record by the individual to who it pertains, when the individual is geographically remote from the personnel office.

RETENTION AND DISPOSAL:

Records which are filed in the Official Personnel Folder (OPF) are retained in the personnel office until the employee leaves the agency. At that time the permanent portion of the OPF is transferred to the gaining Federal agency and temporary OPF records are destroyed by shredding or burning. Copies of records authorized to be maintained by supervisors or other operating offices are destroyed by shredding or burning when the employee leaves the agency. Operating records maintained within the Civilian Personnel Office may be retained up to three years, as needed. When no longer needed, they may be destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESSES:

Staff Director, Office of Civilian Personnel, Headquarters, Defense Logistics Agency, and Directors of Civilian Personnel at DCSC, DRMS, DESC, DGSC, DPSC, DDMT, DDOU, DDRW, DDMP, DASC, DCMDs. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to or

make a personal visit to the activity where the record is maintained. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

Individuals must provide name (last, first, middle initial) and SSN in order to determine whether or not the system contains a record about them. With a written request, individual must provide a return address.

For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system of records should address written inquiries to or make a personal visit to the activity where the record is maintained. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

The request is to contain the name of the individual (last, first, middle initial) SSN, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits. Official mailing addresses are published as an appendix to DLA's record system notices.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employers, U.S. Office of Personnel Management and applications and forms completed by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S491.10DLA-M

System name:

Nonappropriated Fund (NAF) Membership Records (50 FR 22935, May 29, 1985).

Changes:**System location:**

Delete entry and replace with "Military at Defense Construction Supply Center (DCSC), Defense Electronics Supply Center (DESC), Defense General Supply Center (DGSC), Defense Personnel Support Center (DPSC), Defense Depot Ogden (DDOU), and Defense Distribution Region West (DDRW), Community Club at Defense Depot Memphis (DDMT). See official mailing addresses contained in the Address Directory published as an appendix to DLA's systems notices."

S491.10DLA-M

SYSTEM NAME:

Nonappropriated Fund (NAF) Membership Records.

SYSTEM LOCATION:

Military at Defense Construction Supply Center (DCSC), Defense Electronics Supply Center (DESC), Defense General Supply Center (DGSC), Defense Personnel Support Center (DPSC), Defense Depot Ogden (DDOU), and Defense Distribution Region West (DDRW), Community Club at Defense Depot Memphis (DDMT). See official mailing addresses contained in the Address Directory published as an appendix to DLA's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the NAF active/retired military and civilians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Daily Status Report on VOQ, Pool and Swimming Class Registrations, and Liability Agreement between activity and participants. Record contains the member's name, rank, social security number, spouse's name, birth date, and home/office telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302.

PURPOSE(S):

The records provide current listings of club memberships. They are used by the manager of the fund to determine eligibility for membership, mailing NAF activity notices, billing for dues and charges, indicating payment or nonpayment of dues, membership card number, to register applicants, maintain records for future classes and in cases of emergency. The record could be used by the Counsel to terminate membership for nonpayment of dues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Card files and filing cabinets. The records may also be automated.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after member departs, after auditing or after purpose has been served.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The manager of the NAF at DCSC, DESC, DGSC, DPSC, DDMT, DDOU, DDRW. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the system manager of the particular activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices. The written request must be signed.

For personal visits, individuals must present proper identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system of records should address inquiries to the system manager of the particular activity involved. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Assignment orders, identification cards, and financial records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Department of the Navy**CNO Executive Panel, Long Range Planning Task Force; Closed Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet March 22, 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact:

Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

Dated: March 8, 1991.

Wayne T. Baucino,
Lieutenant, JAGC, USNR Alternate Federal Register Liaison Officer.

[FR Doc. 91-6288 Filed 3-14-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY**Financial Assistance Award; Intent to Award Grant to Stanford University's Energy Modeling Forum**

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make an unsolicited financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.14(e)(1), it is making an unsolicited financial assistance award under Grant Number DE-FG01-91E122504 to Stanford University's Energy Modeling Forum (EMF) to assist in the use and construction of statistical models for the analysis of energy events and energy policy.

SCOPE: The objectives of this five (5) year grant are to aid in providing funding in the amount of \$2,292,000 (DOE share subject to availability of funds: \$1,375,000, Stanford University share: \$917,000) for this project, which will make a significant contribution to U.S. energy research by satisfying the following:

- (1) It will systematically bring together major model builders and model users in a forum which elicits dialog between the two groups;
- (2) It will investigate methodological issues germane to the underlying design and construction of specific models;
- (3) It will evaluate energy issues and energy policy responses, with particular emphasis on the applicability of models to specified energy events and policies; and
- (4) It will identify areas where improvements in data and modeling techniques are needed.

Based on the direction and coordination of the eminently qualified Director of the EMF, Dr. John P. Weyant, and EMF providing a forum, otherwise unavailable, of systematically bringing together the major model builders and model users from a broad spectrum covering academic, industrial, and government communities, it is highly probable that the foregoing stated objectives will be achieved.

EMF objectives are meritorious as the project will improve the understanding on the part of all energy researchers, public and private, of the use of models

for the analysis of energy issues and energy policy alternatives. EMF has demonstrated a unique capability of drawing together a diverse group of energy experts from various fields. The membership of the EMF brings to these issues a combination of talent and expertise embodied in both model builders and model users. EMF is judged to be a unique forum for the evaluation of much of the critical energy modeling activity currently being undertaken by government, business, and academic researchers. Furthermore, EMF utilizes innovative approaches when conducting this type of research which would not be eligible for financial assistance under a recent, current or planned solicitation. These capabilities are beyond the scope of any similar work performed and hence this grant will not duplicate any efforts currently underway.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Williams, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1570.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-6325 Filed 3-14-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-1374-000 and CP91-1375-000]

Columbia Gas Transmission Corp.; Requests Under Blanket Authorization

March 5, 1991.

Take notice that on February 27, 1991, Columbia Gas Transmission Company (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to

transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.¹

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice of the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

¹ These prior notice requests are not consolidated.

| Docket No. ^a (date filed) | Shipper name | Peak day, ^a average day, annual | Receipt points | Delivery points | Start up date, rate schedule, service type | Related docket, contract date |
|--------------------------------------|---|--|---------------------|-----------------|--|----------------------------------|
| CP91-1374-000 (2-27-91) | Stone Resource and Energy Corporation. | 5,000 4,000 1,825,000 | PA, OH, WV, KY..... | OH..... | 1-01-91, ITS Interruptible. | ST91-6636-000, 12-11-90. |
| CP91-1375-000 (2-27-91) | Marathon Oil Company... | 979 783 357,335 | WV..... | OH..... | 1-17-91, FTS, Firm. | ST91-6817-000 1-1-91. |

^a Quantities are shown in MMBtu.

^b If an ST docket is shown, 120-day transportation service was reported in it.

[FR Doc. 91-6160 Filed 3-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-164-000 and RP90-165-000]

Mid Louisiana Gas Co.; Informal Settlement Conference

March 8, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, March 15, 1991, at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denking (202) 208-2215 or Joan Dreskin (202) 208-0738.

Lois D. Cashell,
Secretary.

[FR Doc. 91-6161 Filed 3-14-91; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 14 Through January 18, 1991

During the week of January 14 through January 18, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Greenpeace, 1/16/91, LFA-0092

Greenpeace filed an Appeal from a denial by the Deputy Assistant Secretary for Military Application Defense Programs of the DOE (Authority Official) of a Request for Information which the organization had filed under the Freedom of Information Act (FOIA). The Authorizing Official's response stated that a search had been conducted but no responsive documents were found. Greenpeace appealed the adequacy of the search, but did not provide any evidence that responsive documents were in the possession of the

DOE. In considering the Appeal, the DOE found that the Authorizing Official had conducted a search that was reasonably calculated to uncover the requested documents. The search was therefore adequate and Greenpeace's Appeal was accordingly denied.

Lewis, King, Krieg & Waldrop, 1/16/19, LFA-0093

The law firm of Lewis, King, Krieg & Waldrop filed an Appeal from a denial issued to it by the Authorizing Official of the Department of Energy's (DOE) Oak Ridge Operations Office concerning a request for information which it submitted under the Freedom of Information Act. In considering the Appeal, the DOE followed the precedent established in a recent Decision and Order involving the same document at issue in this case. The DOE determined that Oak Ridge must release a copy of the document redacted in the manner prescribed in *The Oak Ridger*, 20 DOE ¶ 80,168 (1990). Accordingly, the Appeal was granted in part.

Remedial Order

Southwestern States Marketing Corporation/Kenneth Walker, 1/14/91, HRO-0258, LRZ-0004, LRZ-0006

The Trustee for the Estate in Bankruptcy of Southwestern States Marketing Corporation (Southwestern) and Kenneth Walker, the firm's former President, Chairman of the Board and majority shareholder objected to a Proposed Remedial Order (PRO) issued jointly to them by the Economic Regulatory Administration (ERA) on October 16, 1984. In the PRO, the ERA alleged that at different times during the audit period, September 1977 through December 1980, Southwestern and Walker violated the layering regulation codified at 10 CFR 212.186, the anti-circumvention regulation set forth at 10 CFR 205.202 and the normal business practices rule contained in 10 CFR 210.62(c).

The Office of Hearings and Appeals rejected all the legal arguments presented by the Respondents, including attacks on the procedural and substantive validity of the three regulations at issue; on the ERA's authority to issue the PRO; and on OHA's authority to find Walker personally liable under a "central figure" rule of liability for the regulatory transgressions alleged in the PRO. OHA's disposition of the latter constitutional challenge is of particular importance. It was Walker's position that Article III of the United States Constitution barred OHA from entertaining causes of action predicated on the central figure or tortious conduct

theory of liability. In rejecting Walker's claim, OHA first opined that Walker's entire constitutional argument proceeded from the erroneous premise that the case against him is grounded on a tort. OHA explained that central figure liability, unlike a traditional private action grounded in tort, does not arise from a violation of any common law duty of care, but from a violation of regulations specifically mandated by Congress. As for Walker specifically, OHA held that his presence in the case derived from his role in causing Southwestern's regulatory violations, not his violation of a common law duty of care. OHA also found that even assuming *arguendo* that central figure liability could be considered as derived from a common law tort, a non-Article III tribunal such as OHA could still adjudicate a case based on central figure liability because the ERA is attempting to vindicate "public rights" arising out of the price and allocation control statutes and the regulations promulgated thereunder. OHA noted that the United States Supreme Court has long recognized that non-Article III tribunals can entertain cases involving "public rights" created by regulatory programs.

OHA also reaffirmed its earlier holdings in the case that the ERA had established a *prima facie* case of regulatory violations and liability therefor, and noted that it was incumbent upon the Respondents to come forward with evidence to rebut the PRO allegations. Most of the voluminous documentation submitted by the Respondents addressed the crucial factual inquiry as to whether Southwestern had performed a service or function traditionally and historically associated with the resale of crude oil for purposes of the layering regulation. On this issue, OHA found that Mr. Walker had presented reliable, probative evidence which demonstrated that in four transactions listed in the PRO, Southwestern had performed a traditional and historical service for purposes of the layering regulation. Specifically, OHA held that Southwestern had provided credit services in one transaction, transportation services in two transactions, and storage in another transaction. OHA made appropriate adjustments to the alleged violation amount to reflect that these transactions did not violate the layering regulation. With respect to the balance of the transactions, however, OHA held that the Respondents had failed to demonstrate that Southwestern had performed any economically valuable

function. Instead, OHA determined that Southwestern used in-line transfers of crude oil to exploit the regulatory program by making unwarranted profits without contributing anything of tangible value to the crude oil market.

OHA therefore concluded that Southwestern had violated the layering regulation during the period January 1978 through 1980, and found the firm liable for overcharges in the amount of \$30,425,297.66, plus interest.

OHA also determined that during the period when Kenneth Walker operated as a sole proprietor under the name, Southwestern States Marketing Company, i.e., September through December 1977, he engaged in the purchase and sale of crude oil through in-line transfers and charged a markup on the crude oil without contributing anything of tangible value to the crude oil distribution system. OHA held that Walker's practice of charging a markup for transferring paper title to crude oil constituted a means to obtain a price higher than permitted by the DOE regulations and violated 10 CFR 210.62(c). OHA also held that Walker's conduct during the latter part of 1977 circumvented the intent of the DOE regulations in violation of 10 CFR 205.202.

For the period January 1978 through May 1980, OHA determined that the evidence in the record was sufficient to establish a *prima facie* case that Kenneth Walker was a central figure in Southwestern's crude oil reselling activities during the operative period. Walker was Southwestern's President, Chairman of the firm's Board of Directors, an 84 percent owner of the firm's stock from January 1978 through November 1978 and 100 percent owner of that stock from December 1978 through May 1980. OHA also determined that the depositions of various individuals which had been introduced into the record of the proceeding demonstrated that Walker remained in control of various aspects of Southwestern's crude oil reselling operations during the applicable period. OHA also held that there was sufficient evidence in the record to support a finding that Walker personally benefited from the regulatory violations asserted in the PRO. Accordingly, OHA found Kenneth Walker personally liable for \$25,895,827.55, plus appropriate interest for the regulatory violations which he committed or caused to be committed during the period September 1977 through May 1980.

Supplemental Order

Murphy Oil Corporation, 1/15/91, KFX-0063

The DOE issued a Decision and Order denying a "Motion for Order Directing Remission of Certain Refunds" filed by Murphy Oil Corporation (Murphy). In its Motion, Murphy requested that DOE remit to Murphy consent order funds earmarked for distribution to injured purchasers of Murphy products. As the basis for its motion, Murphy stated that it has obtained judgments against eight of its customers for amounts that they owe Murphy for purchases of refined petroleum products. Murphy has been unable to collect those judgments and requested that DOE remit any refunds granted to the purchasers to Murphy, rather than to the refund applicants, in satisfaction of Murphy's judgments against them. The DOE rejected Murphy's argument, noting that the Petroleum Overcharge and Distribution Act (PODRA) requires that DOE apply escrowed oil overcharge funds toward direct restitution of persons injured by actual or alleged violations of the regulations promulgated under the Economic Stabilization Act and the Emergency Petroleum Allocation Act. Since Murphy's proposal neither provided for direct restitution as required by PODRA, nor otherwise justified a departure from the typical Subpart V refund distribution, the DOE denied Murphy's Motion.

Implementation of Special Refund Procedures

Quintana Energy Corp., Quintana Refinery Co., Quintana Petrochemical Co., 1/18/91, KEF-0131

The DOE issued a Decision and Order implementing procedures for the distribution of \$3,800,000, plus interest, in alleged refined product and crude oil overcharge funds obtained from Quintana Energy Corporation, Quintana Energy Co. and Quintana Petrochemical Company (hereinafter collectively referred to as Quintana) pursuant to a Consent Order executed between Quintana and the DOE on March 9, 1989. The Quintana-Howell Joint Venture (QHJV) was also covered by the Consent Order. The DOE determined that \$1,900,000 of the funds will be distributed to purchasers of Quintana and/or QHJV refined petroleum products during the period from August 1973 until the date that the product claimed was decontrolled. The remaining \$1,900,000 of the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases. The specific information to be included in an Application for Refund is specified in the Decision and Order.

Refund Applications

Border States Paving, Inc., 1/15/91, RF272-12826, RD272-17740

The DOE issued a Decision and Order concerning an Application for Refund filed by an asphalt manufacturing and road construction firm in the subpart V crude oil proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was \$48,237.

Buffalo Color Corp., 1/18/91, RF272-1581, RD272-1581

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Buffalo Color Corporation (Buffalo) based on the firm's purchases of refined petroleum products during the period of August 19, 1973 through January 27, 1981. The applicant was involved in the chemical industry and used the petroleum products in its business operations. Buffalo was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 States and two Territories filed a "Statement of Objections" and a "Motion for Discovery" with respect to the applicant's claim. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Buffalo was \$26,441.

City & County of San Francisco/Public Utilities Commission, 1/17/91, RF272-60568

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City & County of San Francisco/Public Utilities Commission (San Francisco) based on its purchases of refined petroleum products during the period August 19, 1973 through January

27, 1981. The applicant is a state-owned municipal railway that applied for a refund based on its purchases of diesel fuel. Philip P. Kalodner, an attorney representing utilities, transporters and manufacturers, argued that governmentally-owned transporters are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. The DOE found Mr. Kalodner's objections to San Francisco's eligibility unconvincing and granted the railway a refund of \$32,549.

City of Clarksdale Water & Light Dept.,
1/14/91, RF272-31702

The DOE issued a Decision and Order concerning an Application for Refund filed by a municipal utility in the subpart V crude oil proceeding. The applicant claimed that it purchased 47,167,837 gallons of petroleum products during the crude oil price control period and substantiated its claim by submitting a sample of the business records and invoices used in calculating its gallonage figures. Because the applicant adequately its claim and had certified that it would pass through any refund received to its customers, the DOE determined that the applicant was entitled to receive its full volumetric share. The refund granted to the applicant in this Decision was \$37,734.

City of Phoenix, 1/17/91, RF272-3278

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City of Phoenix based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a municipal entity that applied for a refund based upon its purchases of refined petroleum products which were used in municipally-owned cars. Philip P. Kalodner, Counsel for Utilities, Transporters and Manufacturers, filed conditional objections to this Application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut the City of Phoenix's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted the City of Phoenix a refund of \$27,504.

City of Virginia Beach, 1/14/91, RF272-58262

The DOE issued a Decision and Order concerning an Application for Refund that the City of Virginia Beach (Virginia Beach) filed in the subpart V crude oil

special refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of \$12,578. Philip P. Kalodner (Kalodner), Counsel for Utilities, Transporters, and Manufacturers, filed comments and conditional objections to Virginia Beach's Application for Refund. The DOE determined that Kalodner's comments and objection were insufficient to rebut the presumption of end-user injury. Virginia Beach will be eligible for additional refunds as additional crude oil overcharge funds become available.

Climax Manufacturing Co., 1/16/91,
RF272-2144, RD272-2144

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Climax Manufacturing Co. (Climax) based on the firm's purchases of refined petroleum products during the period of August 19, 1973 through January 27, 1981. The applicant was involved in the paper and pulp industry and used the petroleum products in its business operations. Climax was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 States and two Territories filed a "Statement of Objections" and a "Motion for Discovery" with respect to the applicant's claim. The DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Climax was \$18,248.

Coca-Cola USA, 1/14/91, RF272-17315,
RD272-17315

The DOE issued a Decision and Order granting an Application for Refund filed by Coca-Cola USA, in the subpart V crude oil special refund proceeding. The Applicant is in the soft-drink manufacturing business. The DOE determined that the Applicant was an end-user of the petroleum products that formed the basis of its claim. A Statement of Objections and a Motion for Discovery was filed by a group of 28 States and two Territories in opposition to the application. The DOE determined that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Coca-Cola was \$47,971.

Ethyl Corp., 1/14/91, RF272-9658,
RD272-9658

The DOE issued a Decision and Order granting a refund from crude oil

overcharge funds to Ethyl Corporation (Ethyl), based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Ethyl, a manufacturer of chemicals, plastic products and pharmaceuticals, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. Ethyl was an end-user of the products it claimed and was therefore presumed injured. A group of States and Territories filed Objections to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted Ethyl a refund of \$86,862, and denied a Motion for Discovery which the States had filed.

Farm Fresh, Inc., 1/17/91, RF272-59256,
RD272-59256

The DOE issued a Decision and Order granting an Application for Refund filed by Farm Fresh, Inc., in the subpart V crude oil refund proceeding. The Applicant operates retail grocery and convenience stores. The DOE determined that the Applicant was an end-user regarding the portion of the petroleum products that the Applicant used in its business. The DOE, however, also determined that a refund would not be granted for the petroleum products that the Applicant resold from its convenience stores. A Statement of Objections and a related Motion for Discovery filed by a consortium of States were denied. The refund granted to Farm Fresh was \$898.

Fletcher Oil & Refining Company, Inc./
Brennan Petroleum Co., 1/14/91,
RF329-1

The DOE issued a Decision and Order granting an Application for Refund filed by Brennan Petroleum Co. in the Fletcher Oil & Refining Company, Inc. proceeding. The Applicant purchased directly from Fletcher and was a reseller of Fletcher products. The total volume approved in the Decision and Order was 761,952 gallons of refined products, and the volumetric refund granted to Brennan was \$688.

Fort Worth Transportation Authority,
1/16/91, RF272-5699

On January 16, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by the Fort Worth Transportation Authority in the DOE's subpart V crude oil refund proceeding. In that Decision

and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products as a common carrier. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. The DOE further determined that the applicant was not an affiliate of the Fort Worth Water Department, and that therefore the applicant's right to a refund in this proceeding had not been waived by virtue of the Fort Worth Water Department's having received a refund from one of the crude oil escrow funds. The applicant therefore was granted a refund of \$5,363.

Glenwood Management Corp., 1/14/91, RF272-7002

On January 14, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by Glenwood Management Corporation in the DOE's subpart V crude oil refund proceeding. In that Decision and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products in the course of its normal business activities as an owner and operator of apartment buildings in New York City. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. A consortium of 30 States and Territories filed objections to this application, stating that the applicant was able to pass through the crude oil overcharges that it incurred, and therefore did not suffer injury as a result of the overcharges. The DOE determined that the end-user presumption of injury applied to the applicant, and that presumption had not been rebutted. The applicant therefore was granted a refund of \$10,591.

Interstate Paper Corp., 1/14/91, RF272-14604

The DOE issued a Decision and Order granting an Application for Refund filed by Interstate Paper Corporation (Interstate) in the subpart V crude oil refund proceeding. Interstate used the petroleum products in the manufacture of paper and pulp products. A consortium of states and territories of the United States filed an objection to Interstate's Application, claiming that Interstate was able to pass through the crude oil overcharges to its customers. The DOE found that the Objections were insufficient to rebut the

presumption of injury for end-users. The total refund amount granted is \$24,939.

Lakeside Industries, 1/18/91, RF272-6120, RD272-6120

On January 18, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by Lakeside Industries in the DOE's subpart V crude oil proceeding. In that Decision and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products in the course of its normal business activities as a road construction company. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. A consortium of 30 States and two Territories (the States) filed objections and a Motion for Discovery with respect to this application. In their submission, the States attempted to rebut the end-user presumption of injury. The DOE found that 5 percent of the petroleum products purchased by Lakeside were used pursuant to contracts that permitted the applicant to recover its increased petroleum product costs. Accordingly, Lakeside's gallonage claim was reduced by 5 percent. With respect to the remainder of Lakeside's gallonage claim, the DOE determined that the end-user presumption was applicable. The DOE further determined that the Motion for Discovery should be denied, and that a refund of \$100,175 should be granted to Lakeside.

Mississippi Chemical Co., 1/15/91, RF272-71308, RD272-71308

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Mississippi Chemical Company (Mississippi) based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products to produce and transport chemical fertilizers. The applicant was presumed injured. A consortium of 32 States and two Territories (the States) filed a Statement of Objection and a Motion for Discovery with respect to Mississippi's Application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore, Mississippi's Application for Refund was granted and the States' Motion for Discovery was denied. The refund granted to Mississippi was \$28,816.

Osceola Farms Co., Bogle Farms, Harris Farms, Inc., 1/16/91, RF272-13027, RD272-13027, RF272-16079, RF272-38152, RD272-38152

The DOE issued a Decision and Order granting the Applications for Refund filed by Osceola Farms Company, Bogle Farms, and Harris Farms, Inc., in the subpart V crude oil refund proceeding. The applications were end-users of the petroleum products that formed the basis of their applications. A Statement of Objections and a related Motion for Discovery filed by a consortium of States in two of the cases were denied.

Shell Oil Co./Houma Oil Co., Inc., 1/16/91, RF315-1600

The DOE issued a Decision and Order granting a refund from Shell Oil Company overcharge funds to Houma Oil Company, Inc. (Houma Oil), based on its purchases of Shell refined petroleum products between March 6, 1973 and January 27, 1981. As there are presently enforcement proceedings against Houma Oil, however, it would be inappropriate to give the refund directly to the firm. The DOE therefore directed the firm's refund to be deposited in a separate, interest-bearing escrow account, where it will be held until the Houma enforcement proceedings are resolved. The total refund approved in this Decision is \$7,086 (\$5,809 in principal and \$1,777 in interest).

Shell Oil Co./Ray's Shell, Svendsen Shell, 1/18/91, RF315-2105, RF315-3383

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company special refund proceeding. The applicants purchased indirectly from Shell and were retailers who purchased less than 22,126,106 gallons of product. Since neither of the applicants' suppliers had filed a claim demonstrating that it absorbed the Shell overcharges, the applicants were granted refunds equal to their full allocable shares plus a proportionate share of interest that has accrued on the Shell escrow account. The total amount of the refunds granted in the Decision was \$833 (\$624 principal plus \$209 interest).

State of Georgia Office of Energy Resources, 1/14/91, RF272-60290

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of Georgia Office of Energy Resources (Georgia) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a state entity that applied for a refund based solely on the state's purchases of refined petroleum products for its end-use. Georgia's Application included the

refined petroleum product purchases of all state agencies in Georgia. These state entities include hospitals and state universities, not local school districts. Philip P. Kalodner, Counsel for Utilities, Transporters and Manufacturers, filed conditional objections to this Application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut Georgia's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to Georgia's eligibility unconvincing and granted the state a refund of \$122,053.

Stone Container Corp., 1/18/91, RF272-9294, RD272-9294

The DOE issued a Decision and Order granting the crude oil refund application of Stone Container Corporation. A group of state governments and territories of the United States (the States) had objected to the application, questioning Stone's gallonage total and arguing that Stone was able to pass on the overcharges because of its profitability during the price control period. The DOE determined that the States had failed to produce any convincing evidence to show that the applicant had been able to pass on the crude oil overcharges to its customers. The DOE, however, disallowed that part of the gallonage based on the purchases of Southwest Forest Industries, Inc., a firm which Stone has acquired, because Southwest's subsidiary, Atlanta and St. Andrews Bay Railway, had filed a Waiver in the Rail and Water Transporters refund proceeding. The DOE rejected Stone's argument that the individual who signed the Waiver lacked the authority to do so. The DOE determined that this Waiver did not affect Stone itself, because Stone was not an affiliate of the Atlanta and St. Andrews Bay Railway, as defined in the Stripper Well Settlement Agreement. Accordingly, the DOE granted Stone a refund of \$522,776, based on its approved purchases of 653,469,478 gallons of petroleum products. The DOE also denied the Motion for Discovery filed by the States for reasons discussed in earlier subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Sugar Cane Growers Coop. of Florida, Minn-Dak Farmers Cooperative, 1/14/91, RF272-20246, RD272-20246, RF272-55847, RD272-55847

The DOE issued a Decision and Order granting Applications for Refund filed by the Sugar Cane Growers Coop. of

Florida and Minn-Dak Farmers Cooperative, in the subpart V crude oil refund proceeding. The Applicants are in the sugar processing business. The DOE determined that the Applicants were end-users of the petroleum products that formed the basis of their Applications. A Statement of Objections and a related Motion for Discovery filed by a consortium of States in each case were denied.

Texaco Inc./Crowl Oil Co., Inc. et al., 1/15/91, RF321-2821, RF321-2822, RF321-4980, RF321-5865, RF321-6640

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Texaco Inc. special refund proceeding on behalf of Crowl Oil Co., Inc., a Muskogee, Oklahoma based distributor and consignee of Texas petroleum products (the Muskogee plant). The five applications were filed by four different parties: three previous and one current owner of the Muskogee plant. Each of the three previous owners, Vance McSpadden, James L. Crowl, Sr. and Robert C. Sholar, (Case Nos. RF321-4980, RF321-5865 and RF321-6640), was claiming a refund only for purchases that were made during the portion of the consent order period that he owned the Muskogee plant. The current owners (Case Nos. RF321-2821 and RF321-2822), who acquired the Muskogee plant in 1985, claimed a refund for all the purchases made by the Muskogee plant during the entire refund period. After examining the documents submitted by the applicants, the DOE found no evidence that any one of the three owners of the Muskogee plant during the refund period transferred his right to a possible refund when he sold the plant. Accordingly, the refund applications filed by the current owners were denied. Messrs. McSpadden, Crowl, Sr. and Sholar were all direct purchasers of Texaco products. Each was granted a refund for the purchases he made for the Muskogee plant during the refund period. In addition, Mr. Crowl, Sr. was granted a refund on behalf of purchases he made during the refund period from a consigneeship and jobbership in McAlester, Oklahoma. Mr. Sholar was granted a refund on behalf of purchases he made during the refund period from a distributorship in Chouteau, Oklahoma.

Texaco Inc./Holiday Texaco, 1/18/91, RF321-5390

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Holiday Texaco, a retail outlet that was a direct purchaser of Texaco

refined products. The retail outlet was owned by Lowell Rottrup. Rottrup also owned 50 percent of R.F. Snyder Company, a Texaco consignee/jobber which previously had been granted a refund under the medium-range presumption of injury. The DOE found that because of this common ownership, the two firms should be considered together in determining the appropriate presumption level. Accordingly, Holiday was granted a refund under the medium-range presumption of injury of \$115 (\$95 principal plus \$20 interest).

Tri County Asphalt Corp., 1/16/91, RF272-10915

Tri County Asphalt Corporation is involved in the road construction industry. It filed an Application for Refund as an end user of refined petroleum products in the subpart V crude oil refund proceeding. A group of State governments and two territories of the United States (the States) objected to the application and provided evidence concerning the construction industry as whole. The DOE determined that the States had failed to produce any convincing evidence to show that Tri County Asphalt Corporation had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Tri County Asphalt Corporation are injured by crude oil overcharges. Tri County Asphalt Corporation indicated that 40 percent of its contracts were affected by price escalator clauses and that 40 percent of its liquid asphalt purchases were covered by a price escalator clause. Tri County Asphalt Corporation's liquid asphalt purchase volume claim was reduced accordingly. The DOE granted Tri County Asphalt Corporation a refund of \$3,942 based on its approved purchases of 4,364,438 gallons of petroleum products.

West Lake Quarry & Material Co., 1/15/91, RF272-23187, RD272-23187

West Lake Quarry & Material Company (West Lake) is involved in the road construction industry. It filed an Application for Refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, provided evidence concerning the construction industry as a whole, and filed a Motion for Discovery. The DOE

determined that the States had failed to produce any convincing evidence to show that West Lake had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as West Lake were injured by crude oil overcharges. Since West Lake indicated that exactly 20 percent of its contracts were affected by price escalator clauses, its liquid asphalt purchase volume claim was reduced accordingly. The DOE granted West Lake a refund of \$28,240 based on its approved purchases of 35,300,162

gallons of petroleum products. The DOE accordingly denied the Motions for Discovery filed by the States.

Wildish Sand and Gravel Co., 1/18/91, RF272-32271, RD272-32275

The DOE issued a Decision and Order concerning an Application for Refund filed by an asphalt manufacturing and road construction firm in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the price control period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, construction firms were able to pass through increased petroleum costs. The DOE determined

that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was \$19,102.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|--|-------------|----------|
| Atlantic Richfield Co./Alron Oil Co. | RF304-10410 | 01/16/91 |
| Family Oil Co. | RF304-10411 | |
| Rose's Arco | RF304-10412 | |
| C & M Management Corp. | RF304-13413 | |
| Atlantic Richfield Co./D.L. Bartone Oil Co., Inc. et al. | RF304-4109 | 01/16/91 |
| Atlantic Richfield Co./Mattis Service et al. | RF304-11019 | 01/15/91 |
| Atlantic Richfield Co./Roy's Atlantic Service | RF304-12134 | 01/14/91 |
| Atlantic Richfield Co./Sherwood Hall Arco et al. | RF304-3914 | 01/16/91 |
| Atlantic Richfield Co./Vernon L. Carrow et al. | RF304-9233 | 01/17/91 |
| Aurelius L. Byrd et al. | RF272-65554 | 01/17/91 |
| Beacon Oil Company/Peter T. Hopper, Inc. | RF238-30 | 01/14/91 |
| Charles B. Wise | RF272-108 | 01/14/91 |
| Dabney R. Hinton | RF272-63719 | 01/14/91 |
| Cable Airport, Inc. | RF272-64062 | |
| Exxon Corporation/Jacksonville Electric Authority | RF307-5495 | 01/14/91 |
| Exxon Corporation/K&M Fuel Sales | RF307-888 | 01/15/91 |
| J.A. Cormier Exxon | RF307-6736 | |
| Marshall F. Scott | RF307-6796 | |
| Engles Exxon Service Center | RF307-7191 | |
| Farmers Union Oil Co. et al. | RF272-60559 | 01/15/91 |
| Gulf Oil Corp./Accey A. Stroud et al. | RF300-6159 | 01/17/91 |
| Gulf Oil Corp./Joe's Gulf et al. | RF300-11243 | 01/15/91 |
| Medusa Corporation | RF272-69449 | 01/14/91 |
| P. M. & O. Lines | RA272-33 | 01/18/91 |
| Shell Oil Company/American Airlines, Inc. | RF315-5533 | 01/17/91 |
| Shell Oil Company/Jeff Anderson et al. | RF315-112 | 01/16/91 |
| Shell Oil Company/Kanuga Shell et al. | RF315-1422 | 01/17/91 |
| Shell Oil Company/McPherson Oil Company, Inc. | RF315-589 | 01/16/91 |
| Sublette Cooperative, Inc. et al. | RF272-77176 | 01/15/91 |
| Texaco Inc./Augie & Jonny Auto Inc. et al. | RF321-2445 | 01/15/91 |
| Texaco Inc./Hopkins County Fiscal Court et al. | RF321-5200 | 01/15/91 |
| Texaco Inc./Max A. Eggertsen | RF321-5429 | 01/17/91 |
| Max A. Eggertsen | RF321-5430 | |
| Max A. Eggertsen | RF321-5431 | |
| Max A. Eggertsen | RF321-5432 | |
| Texaco Inc./Vince Lopico Texaco Service, Inc. | RF321-12651 | 01/18/91 |

Dismissals

The following submissions were dismissed:

| Name | Case no. |
|------------------------------|-------------|
| Alba-Waldensian, Inc. et al. | RF272-54315 |
| Angles Exxon | RF307-7518 |
| Bartlesville Texaco | RF321-4701 |
| Bennett M. Ezell | RF321-12214 |
| Bi-State Development Agency | RF272-59611 |
| Bronx Community College | RF272-63691 |
| Capital Shell Service | RF315-1313 |
| Cedartown, GA | RF272-83967 |
| Charles Mills Farms, Inc. | RF272-68254 |
| City of Denison | RF272-82302 |

| Name | Case no. |
|---------------------------------|-------------|
| City of Goldsboro | RF272-82720 |
| City of International Falls, MN | RF272-83050 |
| City of Johnson City | RF272-75297 |
| City of Marquette | RF272-78009 |
| Columbus School District | RF272-83131 |
| Continental Car Wash | RF304-702 |
| Davidson Louisiana, Inc. | RF272-82724 |
| Dewey Texaco | RF321-4702 |
| Dighton U.S.D. #482 | RF272-84023 |
| F&M Co-op Gas & Oil Company | RF272-70396 |
| Gilmer County School District | RF272-80964 |
| Greenwood Motor Lines | RF272-81501 |
| Grow Chemical Company | RF315-7225 |
| Hayes Center Public Schools | RF272-81581 |
| James Francis Humble Exxon | RF307-9728 |

| Name | Case no. |
|---------------------------------------|-------------|
| Joe T. Davidson | RF321-5864 |
| Leake County Board of Education | RF272-83952 |
| Lionel Distributing, Inc. | RF321-4705 |
| Lionel Distributing, Inc. | RF321-4704 |
| Lionel Distributing, Inc. | RF321-4703 |
| Marion City School District | RF272-80120 |
| Mark L. Hesselink | RF272-81649 |
| Marlin G. Bricker | RF272-84680 |
| Monroe County Schools | RF272-82651 |
| Monterey County Dept. of Public Works | RF272-78660 |
| North Branford Board of Education | RF272-84036 |
| Pet Dairy Inc. | RF272-84024 |
| Pioneer Texaco | RF321-4699 |
| Radnor Township | RF272-74510 |

| Name | Case no. |
|----------------------------|-------------|
| Ratliff's Exxon | RF307-9140 |
| Robert H. Jones Texaco | RF321-1264 |
| Robert H. Jones Texaco | RF321-1265 |
| Roy's Markette | RF307-2012 |
| Salem Suede, Inc. | RF272-78641 |
| Tracy's Phillips 66 | RF307-1762 |
| Union County Highway Dept. | RF272-83958 |
| Westside Texaco | RF321-4700 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 8, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-6236 Filed 3-14-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3913-8]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared February 25, 1991 through March 1, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-L65143-WA Rating EC2, Chenuis Creek/Cayada Mountain Timber Sale, Timber Harvest/Improvement, Implementation, Mt. Baker-Snoqualmie National Forest, Clearwater Roadless Area, White River Ranger District, Pierce County, WA.

Summary: EPA expressed environmental concerns based on the potential for adverse air quality impacts on adjacent mandatory Class I airsheds. Additional information was requested to describe monitoring, describe the effects of the project on biodiversity, clarify compliance with the Endangered

Species Act, and clarify the potential effects of the proposed action on the threatened northern spotted owl.

ERP No. D-BLM-K67011-NV, Rating EC2, Betze Open Pit Gold Mine Expansion, Implementation, Elko and Eureka Counties, NV.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to groundwater, reservoir water quality, and to wetlands, riparian areas and wildlife. EPA requested that BLM ensure monitoring and mitigation to protect these resources and to closely coordinate its project activities with the Nevada Division of Environmental Protection to ensure compliance with water quality standards.

ERP No. D-FHW-F40314-WI, Rating EC2, WI-TH 67/Oconomowoc Bypass Corridor Improvement and Relocation, Summit Avenue to existing WI-TH-67 near Lang Road, Funding and section 404 Permit, City of Oconomowoc, Waukesha County, WI.

Summary: EPA expressed concerns on wetland and woodland habitat impacts. EPA requested that the final include a mitigation plan to compensate for those impacts.

ERP No. D-IBK-K39030-CA, Rating LO, Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA.

Summary: EPA commended the Bureau of Reclamation for its efforts to support propagation and survival. The final EIS should fully discuss the assumed operating conditions of the Central Valley Project, which underlie the impacts projected in the EIS.

ERP No. D-VAD-F99008-IL, Rating EC2, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Site Selection, Fort Sheridan, Grant Park, Cissna Park. Possible section 404 Permit, Lake, Kankakee and Iroquois Counties, IL.

Summary: EPA expressed concern about potential impacts to water quality and soils, and the amount of land required.

ERP No. DR-SCS-F36153-IN, rating EO2, Muddy Fork of Silver Creek Watershed Protection Plan, Flood Damage Installation Alternatives, section 404 Permit, Clark, Floyd and Washington Counties, IN.

Summary: EPA has objections to the project based on the lack of adequate wetlands delineations and assessments on the impact to wetlands. This information should be made available in the Final EIS.

Final EISs

ERP No. F-FHW-E50085-00, US 62/68/Ohio River Bridge Construction, Mason County, KY to Brown County, OH, Funding, US Coast Guard Bridge Permit and COE section 404 Permit, Mason Co., KY and Brown County, OH.

Summary: EPA's review concluded that the preferred alternative with the proposed roadway design changes will have minimal effect on environmental resources.

ERP No. F-GSA-F81016-MI, Internal Revenue Service Detroit Computing Center Expansion, Construction, Wayne County, MI.

Summary: EPA has no objection to the proposed project.

ERP No. F-USA-L11007-WA, Yakima Firing Center Expansion of Military Training Center Land Acquisition, 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA.

Summary: EPA has not identified any potential environmental impacts requiring substantive changes to the proposal. This document adequately addresses the proposed project and describes reasonable and appropriate mitigation measures.

Dated: March 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-6243 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3913-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed March 4, 1991 Through March 8, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910067, FINAL EIS, EPA, CA.

City of San Diego Clean Water Program, Siting for Secondary Treatment System and Associated Sludge Management Facilities, Funding, San Diego County, CA. Due: April 15, 1991, Contact: Susan Johnson (415) 744-1934.

EIS No. 910068, DRAFT EIS, AFS, UT, Chepeta Lake, Whiterocks River and Lakeshore Basin Allotment Management Plans, Updated and Issuance of Grazing Permits, Ashley National Forest, Vernal Ranger District, Duchesne and Uintah Counties, UT, Due: April 30, 1991, Contact: Mary Wagner (801) 789-1181.

EIS No. 910069, DRAFT EIS, AFS, MT, Gravelly Sagebrush Burning Project, Implementation, Beaverhead National Forest, Madison County, MT, Due: April 30, 1991, Contact: Ron Schott (406) 682-4253.

EIS No. 910070, DRAFT EIS, BLM, CO, Gunnison Resource Area, Resource Management Plan, Implementation, Montrose District, Hinsdale, Ouray, Gunnison, Saguache, and Montrose Counties, CO, Due: June 15, 1991, Contact: Bill Bottomly (303) 249-6047.

EIS No. 910071, DRAFT EIS, FHW, MT, I-15/North Helena Valley Interchange Improvements, I-15 to Montana Avenue, Construction, Funding, Lewis and Clark County, MT, Due: May 7, 1991, Contact: Dale Paulson (406) 449-5310.

EIS No. 910072, FINAL EIS, MMS, AK, 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK, Due: April 15, 1991, Contact: George Valiulis (703) 787-1662.

EIS No. 910073, FINAL EIS, NOA, VA, Chesapeake Bay National Estuarine Research Reserve System and Management Plan, Site Designation, Goodwin Islands, Catlett Islands, Taskimas Creek and Sweet Hall Marsh, Funding, VA, Due: April 15, 1991, Contact: Joseph Uravitch (202) 673-5122.

Dated: March 12, 1991.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 91-6242 Filed 3-14-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL 3913-9]

Clean Air Act Advisory Committee; Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, No. 217, 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990. In the November 8, 1990 notice, EPA also sought nominations for candidates for membership on the CAAAC.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on April 12, 1991 from 9 to 5 p.m., at the Madison Hotel, 15th and M Streets, NW., Washington, DC. Due to the size of

the meeting room, seating is limited to approximately 150 individuals and will be made available on a first come, first served basis.

The meeting will include a discussion of the implementation strategy for the Clean Air Act Amendments of 1990, the role of the advisory committee and its relationship to the EPA implementation process a discussion of issues of specific interest to committee members, and a discussion of other program efforts to implement the act.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

COMMITTEE MEMBERSHIP: At this time EPA is in the process of contacting selected Advisory Committee nominees. The Committee will consist of approximately 44 individuals.

FOR FURTHER INFORMATION: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, Fax (202) 245-4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: March 12, 1991.
William G. Rosenberg,
Assistant Administrator, Office of Air and Radiation.
[FR Doc. 91-6218 Filed 3-14-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Meeting

A meeting of the Advisory Committee on Advanced Television Service will be held on April 1, 1991 at 2 p.m. in the Sixth floor Conference Room of the Public Broadcasting Service, 1320 Braddock Place, Alexandria, Virginia.

The purpose of this meeting is to receive progress reports from the Subcommittees and the testing Laboratories and consider a Fourth Interim Report.

The agenda for the meeting is as follows:

1. Call to order and introductory remarks by Advisory Committee Chairman Richard E. Wiley

2. Adoption of the minutes of the last meeting
3. Remarks by FCC Chairman Alfred Sikes
4. Treasurer's Report
5. Report of the Test Laboratories
6. Subcommittee Reports
7. Consideration of the Fourth Interim Report
8. Other Business
9. Adjournment

This meeting is open to the public. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or William H. Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-6249 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission by notice published February 4, 1991 (56 FR 4293) solicited comments from interested persons who may be able to provide information relevant to whether and how laws and practices of the People's Republic of China result in the existence of unfavorable or adverse conditions affecting the operations of U.S.-flag carriers. The Commission now has determined to extend the deadline for such comments from April 1, 1991, to May 1, 1991.

DATE: Comments due May 1, 1991.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: None.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-6125 Filed 3-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Buena Vista Bancorp, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Buena Vista Bancorp, Inc.**, Chester, Illinois; to receive a percentage of all credit life insurance premiums generated by its subsidiary bank, Buena Vista National Bank of Chester, Chester, Illinois, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Randolph County, Illinois, as well as contiguous portions of Jackson County, Illinois; Perry County, Missouri, and other such areas in which depositors are located.

Board of Governors of the Federal Reserve System, March 11, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-6173 Filed 3-14-91; 8:45 am]

BILLING CODE 6210-01-F

First Staunton Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **First Staunton Bancshares, Inc.**, Staunton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Staunton, Staunton, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Bancshares of Jackson Hole, Inc.**, Jackson, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Jackson Hole Bancshares Corporation, Jackson, Wyoming, and thereby indirectly acquire 83.9 percent of the voting shares of Bank of Jackson Hole, Jackson, Wyoming.

Board of Governors of the Federal Reserve System, March 11, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-6174 Filed 3-14-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION**Information Collection Activities Under Office of Management and Budget Review**

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0200, GSAR part 514: Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 26; annual responses:

1.0; average hours per response:

0.1667; burden hours: 4.33.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: March 5, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-6140 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Agency for Toxic Substances and Disease Registry**

[ATSDR-28]

Interim Guidelines for Public Comment on Health Assessments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public

Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the intent of ATSDR to make health assessments available for public comment. The document to be made available is the Health Assessment-Public Comment Release. It contains a summary of the interim procedures that will be used to obtain comments from the public concerning these health assessments. These procedures will be used on an interim basis, subject to change based on experiences gained during the implementation period.

FOR FURTHER INFORMATION CONTACT:

Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 104(i) (42 U.S.C. 9604(i)), as amended, requires that ATSDR perform a health assessment for all sites that are proposed for or are on the CERCLA National Priorities List (NPL). In addition, CERCLA authorizes ATSDR, at its discretion, to conduct health assessments for sites in response to requests from the public (petitioned health assessments). The statutory criteria for a health assessment are set out in CERCLA 104(i)(6) (F), (G), and (H). A health assessment is an evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The results of health assessments are to be provided to EPA and the affected state (CERCLA 104(i)(6)(H)).

At this time, ATSDR intends to release health assessments in three iterations; Health Assessment-Initial Release, which is provided to EPA and the affected state(s), Health Assessment-Public Comment Release, which reflects EPA and state comments, as appropriate, and the Health Assessment, which contains responses to public comments.

The Health Assessment-Initial Release represents the agency's best effort, based on currently available information, to fulfill the statutory criteria set out in CERCLA 104(i)(6). To the extent possible, the Health

Assessment-Initial Release presents an assessment of the potential risks to human health posed by the site or facility at issue. When appropriate, based on the results of this document, actions authorized by CERCLA 104(i)(11) or otherwise authorized by CERCLA may be undertaken to prevent or mitigate human exposure or risks to health. In addition, ATSDR utilizes the Health Assessment-Initial Release to determine if follow-up health actions are appropriate at the time. Therefore, since this document fulfills those statutory criteria, and serves the purposes and intentions of CERCLA, it is completed for purposes of CERCLA 104(i)(6)(A).

However, it is the further scientific judgment of ATSDR that additional input from EPA, state and local health entities, and the general public, regarding the health assessment document serves valuable public health objectives. As mentioned in the preamble to the final rule for Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, 42 CFR part 90), ATSDR is not required to provide a public comment period for health assessments. However, based on the results of a pilot study of the impact and effectiveness of providing a public comment period for health assessments, it has been determined that it is beneficial and feasible to do so. A public comment period provides certain benefits to the health assessment process that could not be otherwise obtained. Public confidence is increased and the quality of individual health assessments is enhanced. Although community involvement is actively solicited throughout the development of the health assessment, certain information that would not be available through other means can be acquired through the public comment process. Every effort is made to collect the most current information regarding a site when the health assessment is initiated; however, the public comment period helps to ensure that no critical information has been overlooked.

The Health Assessment-Public Comment Release will include relevant changes in response to comments from EPA and the State. After the close of the public comment period, ATSDR will prepare a response to all written comments received during the public comment period. After all public comments are addressed, the Health Assessment will be issued. This will conclude the health assessment process unless additional information is obtained by ATSDR which, in the agency's sole discretion, indicates a

need to revise or append the conclusions previously issued.

Interim procedures for the conduct of a public comment period for health assessment have been developed and are summarized below.

Public Comment on Health Assessments Summary of Interim Procedures

1. A public notice announcing that a Health Assessment-Public Comment Release is available for public comment will appear in at least one newspaper serving the community near the site. A press release may also be used to announce that a Health Assessment-Public Comment Release is available for public comment. Individual notice of the public comment period for a health assessment may be provided, where deemed appropriate, to Federal and state authorities; potentially responsible parties; owner or operator (if known); individual or group petitioning for a health assessment; and citizen groups.

2. The Health Assessment-Public Comment Release will be distributed to certain repositories (e.g., local libraries) so that any interested person may review the Health Assessment-Public Comment Release. The repositories and an address where comments must be sent will be announced in the public notice. The Health Assessment-Public Comment Release will not be available through the mail.

3. The public comment period will extend for 30 calendar days from the date of the public notice. To be considered, public comments must be in writing and be received at the ATSDR office listed in the public notice by the close of business on the 30th day (or close of business the first business day after the 30th day).

4. After the close of the public comment period, ATSDR will prepare a response to all written comments received during the public comment period. These comments from the public and ATSDR's responses will become part of the Agency's record for individual sites.

5. After all public comments are addressed, the health assessment will be finalized; the responses to the comments will be contained as an appendix.

6. ATSDR may use public meetings to present health assessments contingent upon community interest and the extent and complexity of comments received during the public comment period.

Availability

The interim procedures for public comment on health assessments are available for public inspection at the

Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays.

Dated: March 8, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-6181 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring

Name:

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting: Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring

Time and Date: 9 a.m.-12 noon, March 25, 1992.

Place: Alice Hamilton Laboratory, Conference Room B, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for peer review of a project titled "Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring." This project will employ a combination of real-time monitoring and videotaping of surgical procedures to identify surgical tasks and tools that produce emissions during surgical procedures. This combination can be used by surgical personnel to identify tasks that produce emissions and to demonstrate devices and work practices that can be used to reduce emissions.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Jerome P. Smith, Ph.D., Project Officer, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-8, Cincinnati, Ohio 45226, telephone 513/841-4293 or FTS 684-4293.

Dated: March 21, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-6357 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 91F-0066]

Alcoa Separations Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ALCOA Separations Technology, Inc., Aluminum Co. of America has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that ALCOA Separations Technology, Inc., Aluminum Co. of America, 181 Thorn Hill Rd., Warrendale, PA 15086-7527, has filed a petition (FAP 1B4254) proposing that the food additive regulations in § 177.2910 *Ultra-filtration membranes* be amended to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: March 11, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-6177 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Reconsideration of Disapproval of Colorado State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 16, 1991, in room 431 Federal Office Building, 1961 Stout Street, Denver, Colorado to reconsider our decision to disapprove Colorado State Plan Amendment 89-12.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Colorado State Plan amendment (SPA) number 89-12.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirement contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of Colorado sought protection for several income and resource eligibility policies under the authority of the moratorium enacted by section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA) as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987. The DEFRA moratorium provided protection from adverse actions by the

Secretary against States because he determined their plan violated section 1902(a)(10)(a)(ii) (IV), (V), or section 1902(a)(10)(C)(i)(III) of the Social Security Act because the plan includes a standard or methodology which is less restrictive than that required by those sections.

The DEFRA moratorium did not alter the substantive authority governing the approval of State plans or plan amendments. Thus, material submitted for moratorium protection would be disapproved unless it qualified for approval under the Medicaid statute independent of the provisions of the moratorium. However, HCFA would confer protected status upon submissions which qualified for protection under the moratorium. Furthermore, plan amendments which increase services or eligibility cannot have a retroactive effective date any earlier than the beginning of the calendar quarter in which they were submitted. This limitation has been, and continues to be, part of the Department's appropriations statutes and is reflected in 42 CFR 430.20.

The moratorium protected qualifying plan policies for the period from October 1, 1981 through February 17, 1989. The moratorium was replaced by section 1902(r)(2) of the Social Security Act, which amended the substantive provisions of the Medicaid statute. Colorado does not seek approval of its amendment under the authority of section 1902(r)(2). The Health Care Financing Administration has treated State requests for protection under the DEFRA moratorium through the State plan amendment process.

The eligibility groups to which Colorado applied these policies were (1) institutionalized individuals who met the resource requirements of the Supplemental Security Income (SSI) program and who satisfied a special income standard established by the State (section 1902(a)(10)(A)(ii)(V)), and (2) individuals who received a State supplementary payment (section 1902(a)(10)(A)(ii)(IV)).

Colorado's amendment included two resource policies. One would exempt from countable resources the home of an institutionalized individual as long as the individual intends to return to it (even if just to die there).

This policy is consistent with the SSI rules. Thus, since the Secretary did not find it to be more liberal than the SSI policy, it does not qualify for protection under the DEFRA moratorium. For the same reason, the State should not be penalized for employing this policy.

The second resource policy was to reduce the cash surrender value of a life

insurance policy by \$1500 for funeral and burial funds, if the individual has no other burial funds. These exempt funeral and burial funds could be clearly designated funds which are part of a larger insurance policy. This policy is more liberal than SSI. However, HCFA disapproved it because Colorado could not demonstrate that it was a policy which qualified under the definition of a State plan for purposes of the DEFRA moratorium. Section 2373(c)(5) of the amended DEFRA moratorium defines a State plan to include any amendment or other change which is submitted by the State (whether approved, disapproved, or not acted upon) or any policy or guideline delineated in the State's Medicaid operations or program manual which are submitted to the Secretary. HCFA believes that the State must submit documentation which establishes that the policy was in place as of the time in which the State purports it was in effect. Since Colorado could not document that the policy was not in the plan or its manuals, or had been submitted in a timely manner for the period in question (even if ultimately disapproved), HCFA concluded that the provision did not qualify for protection.

Colorado also seeks moratorium protection for three income deductions. They are deductions from the income of non-recipients before the remainder of their income is deemed to a Medicaid applicant or recipient. The specific deductions are: (1) An allowance for self (standard of assistance); (2) an allowance for dependent children (AFDC); (3) an allowance for work related expenses; and (4) an allowance for medical expenses for which the (non-recipient) individual is responsible that are not covered by Medicaid and/or Medicare. These deductions are in certain respects more liberal than those of the SSI program.

While the DEFRA moratorium could protect more liberal income counting methods than those of the SSI program, its legislative history demonstrates that Congress did not intend for States to use the moratorium to override the income based limits on Federal financial participation established in section 1903(f) of the Social Security Act. Also, the moratorium does not refer to protection against the limits specified in section 1903(f). Because a State plan amendment which could produce a violation of these limits would necessarily cause avoidable administrative burdens, HCFA concluded that providing protection for potential violations of these limits is contrary to sections 1902(a)(4) and (a)(19) of the Social Security Act. These provisions dictate that the State's plan

must contain such methods of administration which the Secretary finds to be necessary for the proper and efficient operation of the plan. It must also provide such safeguards as may be necessary to ensure that eligibility will be determined in a manner consistent with simplicity of administration and the best interests of recipients. The DEFRA moratorium does not protect States against the violation of either section 1902(a)(4) or section 1902(a)(19).

The issues to be considered in the hearing are specified in the notice to Colorado announcing the administrative hearing to reconsider the disapproval of State plan amendment 89-12 which is reproduced below:

Ms. Irene M. Ibarra,
Executive Director, Colorado Department of
Social Services, 1575 Sherman Street, 8th
Floor, Denver, Colorado 80203-1714

Dear Ms. Ibarra: I am responding to your request for reconsideration of the decision to disapprove Colorado State Plan Amendment (SPA) 89-12. This amendment, seeks to implement various resource and income policies that apply to individuals eligible for Medicaid under a special income level and individuals eligible for Medicaid because of receipt of a State supplementary payment (SSP). You have requested that these policies be protected under the moratorium provisions of the Deficit Reduction Act 1984 (DEFRA) beginning October 1, 1981. You also note that you do not want protection under section 1902(r)(2) of the Social Security Act (the Act) for these policies.

The basic issue to be considered in the hearing is whether the plan amendment qualifies for protection under the DEFRA moratorium. This includes two subsidiary issues: (1) Whether the submittal violates section 1902(a)(4) and section 1902(a)(19) of the Act and (2) whether the burial fund resource exclusion contained in a State plan or operating manual meets the requirements of section 2373(c)(5). Also, in the context of considering the disapproval of the submittal as a plan amendment, we note there is an issue whether the amendment would retroactively amend the State's plan in a manner which increases eligibility for services, beyond the time frames authorized under 42 CFR 430.20 and the Department's appropriations statutes.

I am scheduling a hearing on your request for reconsideration to be held on April 16, 1991, in room 431 Federal Office Building, 1916 Stout Street, Denver, Colorado. If the date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at

the hearing. The Docket Clerk may be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky, Ph.D.,

Administrator

(Section 1116 of the Social Security Act)
(42 U.S.C. section 1316; 42 430.18)

(Catalog of Federal Domestic Assistance
Program No. 13.714, Medicaid Assistance
Program)

Dated: March 8, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing
Administration.

[FR Doc. 91-6185 Filed 3-14-91; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Committee Renewal

Pursuant to the Federal Advisory
Committee Act, Public Law 92-463 (5
U.S.C. appendix II), the Health
Resources and Service Administration
announces the renewal of the following
advisory committee.

| Council | Termination date |
|---|------------------|
| Advanced General Dentistry Review Committee. | June 8, 1993. |

Dated: March 11, 1991.

Jackie E. Baum,

Advisory Committee Management Officer,
HRSA.

[FR Doc. 91-6115 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Project Grants for Renovation or Construction of Non-Acute Care Intermediate and Long-Term Care Facilities for Patients with Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Health Resources and Services
Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Health
Resources Development (BHRD), Health
Resources and Services Administration
(HRSA) announces that fiscal year (FY)
1991 funds are available for project
grants for the renovation or construction
of non-acute care, intermediate and
long-term care facilities for patients with
AIDS or other Human
Immunodeficiency Virus (HIV) related
conditions. Funds were appropriated for
this purpose by Public Law 101-517
under the authority of section 1610(b) of
the Public Health Service (PHS) Act.

DATES: To receive consideration,
applications for the renovation or
construction of facilities for patients
with AIDS or other HIV-related
conditions must be received by the close
of business June 13, 1991 by the Grants
Management Officer, Ms. Glenna B.
Wilcom, at the address below.

Applications will meet the deadline if
they are either: (1) Received on or before
the deadline date; or (2) postmarked on
or before the deadline date, and
received in time for submission to the
review committee. A legibly dated
receipt from a commercial carrier or U.S.
Postal Service will be accepted instead
of a postmark. Private metered
postmarks will not be acceptable as
proof of timely mailing. Hand delivered
applications must be received by 5 pm,
June 13, 1991. Grant applications that
are received after the deadline date will
be returned to the applicant.

FOR FURTHER INFORMATION CONTACT:

Additional information relating to
technical and program issues may be
obtained from Ms. Katharine Buckner,
Division of Facilities Assistance and
Recovery, Bureau of Health Resources
Development, Parklawn Building, room
11A-10, 5600 Fishers Lane, Rockville,
Maryland 20857, (301) 443-0271. Grant
applications and additional information
regarding business, administrative or
fiscal issues related to the awarding of
grants under this Notice may be
requested from the Grants Management
Officer, Ms. Glenna B. Wilcom,
Parklawn Building, room 13A-38, 5600
Fishers Lane, Rockville, Maryland 20857,
(301) 443-2280. Applicants for grants will
use form PHS 5161-1, approved under
OMB Control Number 0937-0189.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Public Law 101-517 provides funds for
grants under the authority of section
1610(b) of the PHS Act, for the
renovation or construction of non-acute
care, intermediate and long-term care
facilities for patients with AIDS or other
HIV-related conditions. Section 1610(b)
requires that grantees provide services
for patients with AIDS or other HIV-
related conditions and that the amount
of any grant may not exceed 80 percent
of the cost of the project for which the
grant is made unless the project is
located in an area determined by the
Secretary to be an urban or rural
poverty area, which case the grant may
cover up to 100 percent of such costs.
(Urban or rural poverty area is defined
as a medically underserved area
designated by the Secretary (42 CFR
51c.102).) For information regarding the
current medically underserved areas,

contact the Director, Office of Shortage
Designation, room 4-101, Parklawn
Building, 5600 Fishers Lane, Rockville,
Maryland 20857, or telephone (301) 443-
6932.

The purpose of these funds is to
support the construction and/or
renovation of facilities that provide a
comprehensive and cost-effective
approach to non-acute care,
intermediate and/or long-term care for
patients with AIDS or other HIV-related
conditions. Examples of such a project
may include:

(1) Projects for the renovation of
existing traditional health care facilities
such as hospitals, nursing homes, or
hospices. For example, funds might be
used to convert a small number of
existing beds (i.e., 5-10) or to expand a
facility to include several new beds for
AIDS patients;

(2) Projects for the construction of
new health care facilities to provide
comprehensive intermediate and/or
long-term care for some or all of the
various stages of illness of an HIV-
infected individual. Services may
include, among others, outpatient care,
skilled nursing care and hospice care;
and

(3) Projects for the renovation of
existing facilities other than traditional
health care facilities, such as residential
housing.

Availability of Funds

A total of \$3,989,000 is available in FY
1991 to be awarded for the renovation or
construction of non-acute care,
intermediate and long-term care
facilities for AIDS patients. It is
anticipated that: (1) Approximately 13
grants averaging approximately \$300,000
each will be awarded and (2) the
minimum amount of a grant will be
\$100,000.

Eligible Applicants

To be eligible, applicants must: (1) Be
a public or private nonprofit entity; (2)
have a source of funding to meet the
non-Federal portion of the eligible
construction cost; (3) have title to a
building site or have a 25 year lease, or
have a written commitment to acquire
such title or lease within 6 months from
the date of the grant award; (4) provide
non-acute care, intermediate and/or
long-term care for patients with AIDS or
other HIV-related conditions as a part of
whatever coordinated group of HIV-
related outpatient and ambulatory
health and support services exists in
the community; (5) demonstrate that
health care services, under the general
direction of a physician, are an essential
part of the programmatic scope of the

project and will be routinely provided in space at the facility; (6) participate in local planning and document linkages with other U.S. Department of Health and Human Services funded programs and specialized state-local funded HIV services in the community; and (7) be located in a Metropolitan Statistical Area with a population over 500,000 that has more than 500 cumulative cases of AIDS, as reported by the Centers for Disease Control as of November 30, 1990 (see appendix A).

Further, applicants must agree in writing to provide: (1) An assurance that, after such application is approved, the facility or portion thereof to be constructed or renovated will be made available to persons residing or employed in the area served by the facility who need the services offered by the facility, in accordance with 42 CFR part 124, subpart G; and

(2) An assurance that a reasonable volume of services will be available to persons unable to pay for care in the facility or the portion thereof which is to be constructed or renovated, in accordance with 42 CFR part 124, subpart F (OMB Clearance Number 0915-0077).

A condition of the grant award will be, in part, that before grant funds can be released, the grantee must: (1) Record the notice of the Federal interest and grant recovery rights at its local land records office and provide a copy of the official recording to the PHS Grants Management Office in the grantee's respective region.

(2) Provide a statement from the lessor to the Regional Grants Management Office (if the property is to be leased) that it is understood that there will be a notice of the Federal interest and grant recovery rights at the local land records office.

Evaluation Criteria

To receive an award, applicants must demonstrate their ability to provide health care services which meet the need for non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions. Projects will be selected on a competitive basis by an objective review committee based on the following evaluation criteria:

(1) Applicant's qualifications and experience in providing health care and treatment to AIDS/HIV patients;

(2) Clearly defined goals and objectives with the specific activities required to accomplish the goals of the proposed project;

(3) A clearly documented needs assessment which justifies the scope of services proposed by the project;

(4) A plan for case management to assure the coordination of health services for patients with AIDS or other HIV-related conditions. At a minimum, case management should: (a) Provide a confidential identification system that establishes which medical and support services the client is utilizing; and (b) provide consultation to clients on the availability of medical services, community-based treatment alternatives and other support services;

(5) A description of the quality and scope of medical care as well as qualifications of the staff who will ensure appropriate medical care of patients with AIDS or other HIV-related conditions;

(6) A plan demonstrating that needs of racial and ethnic minorities have been considered, and that efforts will be made to meet such needs;

(7) Letters of support or other documents, at a minimum, from (a) planning councils of title I eligible metropolitan areas under the Ryan White C.A.R.E. Act if there is a council in the project's area; and, (b) consortia funded under title II of the Ryan White C.A.R.E. Act. In addition, documentation of support should be provided from local community organizations and health care providers who provide services to patients with AIDS or other HIV-related conditions, validating the need for the proposed services and for the project as a whole. Projects which will be located in the service area of a HRSA funded adult or pediatric AIDS Service Demonstration Project must also submit a letter of endorsement from that project (see appendix B);

(8) The appropriateness of the project design, facility construction/renovation plans and time frames for initiation through completion of the project. Schematic drawings must be provided with the application;

(9) The reasonableness and justification for the itemized costs in the construction budget. All requests for movable equipment must include itemization and unit price;

(10) The ability of the applicant to provide more than the minimally required matching amount of the cost for the construction project;

(11) Documentation of reimbursement sources and other funding sources sufficient to support program operations and to maintain the ongoing financial viability of the project after the construction has been completed;

(12) Demonstration of the applicant's intent to maintain the portion of the facility receiving this Federal assistance for AIDS-related care for a period of twenty years.

Technical Assistance Workshops

The Bureau will conduct two programs technical assistance workshops to answer questions from potential applicants. The workshops will be held soon after publication of this Federal Register Notice at the following locations:

Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Federal Office Building, 50 United Nations Plaza (Seventh and Market Street), San Francisco, CA 94102

Applicants who wish to attend a workshop should contact Ms. Katharine Buckner, at (301) 443-0271, for the schedule of dates and times. Applicants must confirm their participation as to which workshop they will attend and the number of individuals that will attend. Expenses incurred by the workshop attendees will not be reimbursed by the Federal Government. Participation in the technical assistance workshops does not assure approval and funding of prospective applications.

Allowable Costs

A successful applicant under this Notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and PHS applicable to grants; the applicable Office of Management and Budget (OMB) circular for public and private non-profit grantees; and Appendix II of the PHS Grants Policy Statement applicable to construction.

Other Awards Information

The grant may be terminated for cause if the grantee materially fails to comply with the terms and conditions of the grant. Unless an approved construction contract is entered into within one year of the grant award date the grant shall be subject to termination. Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective

applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The SPOC has 60 days after the application deadline date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

The OMB Catalog of Federal Domestic Assistance number for Section 1610(b) is 93.887.

Dated: January 9, 1991.

John H. Kelso,

Acting Administrator.

APPENDIX A

Metropolitan Statistical Areas with a Population Over 500,000 with more than 500 Cumulative Cases of AIDS as Reported to the Centers for Disease Control as of November 30, 1990

1. New York, NY
 - Bronx
 - Kings
 - New York
 - Putnam
 - Queens
 - Richmond
 - Rockland
 - Westchester
2. Los Angeles-Long Beach, CA
 - Los Angeles
3. San Francisco, CA
 - Marlin
 - San Francisco
 - San Mateo
4. Houston, TX
 - Fort Bend
 - Harris
 - Liberty
 - Montgomery
 - Waller
5. Washington, DC-MD-VA
 - District of Columbia
 - Calvert, MD
 - Charles, MD
 - Frederick, MD
 - Montgomery, MD
 - Prince George's, MD
 - Arlington, VA
 - Stafford, VA
 - Alexandria, VA
 - Fairfax, Fairfax City and Falls Church, VA
 - Prince William,
 - Manassas and
 - Manassas Park, VA
6. Newark, NJ
 - Essex
 - Morris
 - Sussex
 - Union
7. Miami-Hialeah, FL
 - Dade
8. Chicago, IL
 - Cook
 - Du Page
 - McHenry
9. Philadelphia, PA-NJ
 - Burlington, NJ
 - Camden, NJ
 - Gloucester, NJ

- Bucks, PA
 - Chester, PA
 - Delaware, PA
 - Montgomery, PA
 - Philadelphia, PA
10. Atlanta, GA
 - Barrow
 - Butts
 - Cherokee
 - Clayton
 - Cobb
 - Coweta
 - De Kalb
 - Douglas
 - Fayette
 - Forsyth
 - Fulton
 - Gwinnett
 - Henry
 - Newton
 - Paulding
 - Rockdale
 - Spalding
 - Walton
 11. San Juan, PR
 - San Juan
 - Bayamon
 - Canovanas
 - Carolina
 - Catano
 - Guaynabo
 - Loiza
 - Toa Baja
 - Trujillo Alto
 12. Dallas, TX
 - Collin
 - Denton
 - Ellis
 - Kaufman
 - Rockwall
 13. Boston-Lawrence-Salem-Lowell-Brockton, MA
 - Essex
 - Middlesex
 - Norfolk
 - Plymouth
 - Suffolk
 14. Ft. Lauderdale-Hollywood-Pompano Beach, FL
 - Broward
 15. San Diego, CA
 - San Diego
 16. Oakland, CA
 - Alameda
 - Contra Costa
 17. Baltimore, MD
 - Anne Arundel
 - Baltimore
 - Carroll
 - Harford
 - Howard
 - Queen Anne's
 - Baltimore City
 18. Jersey City, NJ
 - Hudson
 19. Nassau-Suffolk, NY
 - Nassau
 - Suffolk
 20. Seattle, WA
 - King
 - Snohomish
 21. Tampa-St Petersburg-Clearwater, FL
 - Hernando
 - Hillsborough
 - Pasco
 - Pinellas

22. New Orleans, LA
 - Jefferson
 - Orleans
 - St. Bernard
 - St. Charles
 - St. John the Baptist
 - St. Tammany
23. West Palm Beach-Boca Raton-Delray Beach, FL
 - Palm Beach
24. Detroit, MI
 - Lapeer
 - Livingston
 - Macomb
 - Monroe
 - Oakland
 - St. Clair
 - Wayne
25. Bergen-Passaic, NJ
 - Bergen
 - Passaic
26. Anaheim-Santa Ana, CA
 - Orange
27. Denver, CO
 - Adams
 - Arapahoe
 - Denver
 - Douglas
 - Jefferson
28. Riverside-San Bernardino, CA
 - Riverside
 - San Bernardino
29. Kansas City, MO
 - Johnson
 - Leavenworth
 - Miami
 - Wyandotte
 - Cass
 - Clay
 - Jackson
 - Lafayette
 - Platte
 - Ray
30. Phoenix, AZ
 - Maricopa
31. St. Louis, MO-IL
 - Clinton, IL
 - Jersey, IL
 - Madison, IL
 - Monroe, IL
 - St. Clair, IL
 - Franklin, MO
 - Jefferson, MO
 - St. Charles, MO
 - St. Louis, MO
 - St. Louis City, MO
32. Middlesex-Somerset-Hunterdon, NJ
 - Hunterdon
 - Middlesex
 - Somerset
33. San Antonio, TX
 - Bexar
 - Comal
 - Guadalupe
34. Jacksonville, FL
 - Clay
 - Duval
 - Nassau
 - St. Johns
35. Portland, OR
 - Clackamas
 - Multnomah
 - Washington
 - Yamhill
36. Orlando, FL

Orange
Osceola
Seminole
37. Minneapolis-St. Paul, MN-WI

Anoka, MN
Carver, MN
Chisago, MN
Dakota, MN
Hennepin, MN
Isanti, MN
Ramsey, MN
Scott, MN
Washington, MN
Wright, MN
St. Croix, WI

38. San Jose, CA
Santa Clara

39. Austin, TX

Hays
Travis
Williamson

40. Monmouth-Ocean, NJ

Monmouth
Ocean

41. Sacramento, CA

El Dorado
Placer
Sacramento
Yolo

42. Ft. Worth-Arlington, TX

Johnson
Parker
Tarrant

43. New Haven-Waterbury-Meriden, CT

New Haven

44. Cleveland, OH

Cuyahoga
Geauga
Lake
Medina

45. Bridgeport-Stamford-Norwalk-Danbury, CT

Fairfield

46. Hartford-New Britain-Middletown-Bristol, CT

Hartford
Middlesex
Tolland

47. Pittsburgh, PA

Allegheny
Fayette
Washington
Westmoreland

APPENDIX B

Adult AIDS Service Demonstration Projects Directory

Serving Phoenix, Arizona

Maricopa County Department of Health Services, 1825 East Roosevelt, Phoenix, AZ 85006, Judith Hartner, MD, Acting Assistant Director for Community Health Services (602) 258-6381

Serving Los Angeles-Long Beach, California

Los Angeles County Department of Health Services, AIDS Program Office, 600 South Commonwealth, 6th Floor, Los Angeles, CA 90005 Robert Frangenberg (213) 351-8001

Serving San Diego, California

Department of Health Service, P.O. Box 85524, San Diego, CA 92138 Binnie Calender, Chief, Office of AIDS Coordination, (619) 236-2254

Serving San Francisco—Oakland, California

San Francisco Department of Public Health, 25 Van Ness Avenue, Suite 500, San Francisco, CA 94102, Sophia W. Chang, M.D., Director, AIDS Office (415) 554-9017

Serving Santa Ana-Anaheim-Garden Grove, California

County of Orange, Health Care Agency, 1719 W. 17th Street, P.O. Box 355, Santa Ana, CA 92702, Penny C. Weismuller, Dr. P.H., AIDS Coordinator (714) 834-2015

Serving Denver-Boulder, Colorado

City and County of Denver, 777 Bannock Street, Denver, CO 80204 Adam Meyers, M.D. (303) 893-7270

Serving Miami, Florida

Jackson Memorial Hospital, 1611 NW. 12th Avenue, Miami, FL 33316 Barbara Loyd, Administrator, AIDS Program (305) 549-7744

Serving Ft. Lauderdale-Hollywood, Florida

Northwest Health Center, 624 Northwest 15th Way, Fort Lauderdale, FL 33311, Jasmin Shirley Moore (305) 467-4532

Serving Atlanta, Georgia

AIDS Atlanta, 1132 W. Peachtree Street, Atlanta, GA 30309 Sandra L. Thurman (404) 872-0600

Serving Chicago, Illinois

AIDS Foundation of Chicago, 1332 N. Halsted Street, Chicago, IL 60622, Kathleen Ahler, M.S.W. (312) 642-5454

Serving New Orleans, Louisiana

New Orleans/AIDS Task Force, Inc., 1407 Decatur Street, New Orleans, LA 70116, Jeff Campbell, Executive Director (504) 945-4000

Serving Boston, Massachusetts

Fenway Community Health Center, 93 Massachusetts Avenue, Boston, MA 02115, Judith Heiman (617) 287-0900

Serving Baltimore, Maryland

Maryland Department of Health and Mental Hygiene, 201 West Reston Street, Baltimore, MD 21201; Eric Fine, MD, MPH (301) 225-6804

Serving Detroit, Michigan

United Community Services of Metropolitan Detroit, 1212 Griswold, Detroit, MI 48226, Judy Lipshutz (313) 226-9487

Serving Jersey City, New Jersey

County of Hudson, 595 Newark Avenue, Jersey City, NJ 07306 Carol Ann Wilson (201) 795-6933

Serving Newark, New Jersey

New Jersey State Department of Health, Division of AIDS Prevention & Control, CN 363, 363 West State Street, Trenton, NJ 08625 Steve Young, Director, Hospital/Post Hospital Support Services Unit (609) 984-6000

Serving Nassau-Suffolk, New York

Nassau-Suffolk Health Systems Agency, 1537 Old Country Road, Plainview, NY 11803; Linda Wenzel (516) 293-5740

Serving New York, New York

The AIDS Service Delivery Consortium of New York City, 5 Penn Plaza, room 429, New York, NY 10001, Andrew Kruzich, Director, Program Development (212) 613-2411

Serving Philadelphia, Pennsylvania, and Camden, New Jersey

Philadelphia Health Management Corporation, 260 S. Broad Street, 20th floor, Philadelphia, PA 19102, John Loeb (215) 985-2530

Serving San Juan, Puerto Rico

Puerto Rico Department of Health, Box 70184, San Juan, Puerto Rico 00936, Johnny Rullan, M.D. (809) 721-0965 or 721-2284

Serving Dallas-Fort Worth, Texas

AIDS ARMS Network, Community Council of Greater Dallas, 2727 Oak Lawn, suite 222, Dallas, TX 75219; Warren W. Buckingham (214) 521-5191

Serving Houston, Texas

Harris County Hospital district, 726 Gillette, Houston, TX 77019 R. King Hillier (713) 652-1200

Serving Seattle-Everett, Washington

AIDS Health Service Program, 1116 Summit Avenue, suite 200, Seattle, WA 98101, Rosemary Ryan, Project Coordinator (206) 296-4568

Serving Washington, DC

DC Department of Human Services, Commission of Public Health, 1660 L Street, NW., suite 700, Washington, DC 20036; Iris Lee, Acting Chief, Office of AIDS Activities, (203) 673-6888

Pediatric AIDS Service Demonstration Projects Directory

Boston Pediatric AIDS Project; Jackie Jenkins-Scott, Project Director, Dimock Community Health Center, 53 Dimock Street, Roxbury, MA 02119, 617/442-8800

Connecticut Pediatric AIDS Health Demonstration Project; Rick Jacobsen, Ph.D./Joanne Allport, M.D., M.P.H., Project Directors, Connecticut Primary Care Association, 47 Vine Street, Hartford, CT 06112, 203/522-2199

Northern Manhattan Women and Children HIV Demonstration Project; Zena A. Stein, M.D., Project Director, Associate Dean of Research, Columbia University School of Public Health, 600 West 163rd Street, New York, New York 10032, 212/928-5103, FAX 212/305-6832

Family AIDS Case Management Program; Steve Fisher, Project Director, Assistant Deputy Commissioner, Division of AIDS Services, Human Resources Administration, 300 West 34th Street, room 311, New York 10001, 212/790-3163-3164

Brooklyn Pediatric AIDS Demonstration Project; Herman Mendez, M.D., Project Director, Health Science Center, Box 49, 450 Clarkson Street, Brooklyn, New York 11203, 718/363-7323, FAX 718/270-3824

Bronx Pediatric AIDS Consortium (B-PAC); William Caspe, M.D., Project Director, Albert Einstein College of Medicine, 1300

Morris Park Avenue, Bronx, New York 10461; 212/294-2492

Model Comprehensive Health Care Program for Adolescents; Karen Hein, M.D., Project Director, Adolescent AIDS Program, Montefiore Medical Center, NW. 674, Department of Pediatrics, 111 E. 210th Street, Bronx, New York 10467, 212/920-6612

Development of a Statewide Health Services Network for Children with HIV Infection and Their Families; Ms. Barbara Kern, Project Director, NJ Department of Health, Special Child Health Services, CN 346, Trenton, New Jersey 08625; 209/292-5676
Pediatric AIDS Health Care Demonstration Project; Patricia A. Tompkins, Project Director, Chief, OMCH, DC DHS, Office of Maternal and Child Health, 1660 L Street, NW., Suite 907, Washington, DC 20336; 202/673-4551

Maryland Pediatric AIDS Health Care Demonstration Projects; Eric M. Fine, M.D., M.P.H., Project Director, AIDS Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201; 301/225-6804

Puerto Rico Pediatric AIDS Demonstration Project; Johnny Rullan, M.D., Project Director, Puerto Rico Department of Health, Box 5058, GPO, Hato Rey, Puerto Rico 00919-5808; 809/721-2264 or 0965, 754-5344 or 5422, FAX 809/723-3565 or 764-6769

Pediatric AIDS Demonstration Project; Virginia D. Floyd, M.D., Project Director, GA Department of Public Resources, Division of Public Health, 878 Peachtree Street, NE., room 217, Atlanta, GA 30309; 404/894-8622

Youth and AIDS Prevention Program; Gary Remafedi, M.D., M.P.H., Project Director, University of Minnesota, Box 721 UMHC, Harvard Street & E. River Road, Minneapolis, MN 55455; 612/626-2820

Pediatric AIDS Health Care Demonstration Project; Barbara Lloyd, Project Director, Public Health Trust—Dade County Florida, 1611 NW. 12th Avenue, Miami, FL 33136; 305/549-7744

A Model Program for Pediatric AIDS Prevention and Control in Michigan; Karen Schrock, Project Director, Office of Maternal and Child Health, Michigan Department of Public Health, 3423 North Logan Street, P.O. Box 30195, Lansing, MI 48909; 517/335-6900

Pediatric AIDS Program in New Orleans; Michael Kaiser, M.D., Project Director, Children's Hospital of New Orleans, 200 Henry Clay Avenue, New Orleans, LA 70116; 504/866-2993

Pediatric AIDS Health Care Demonstration Project; John A. Mangos, M.D., Project Director, University of Texas Health Science Center, 7703 Floyd Curl Drive, San Antonio, TX 78284-7802; 512/567-5215

Dallas-Ft. Worth Pediatric AIDS Health Care Program; Janet Squires, M.D., Project Director, Ambulatory Pediatric Division, CMC Dallas, 1935 Motor Street, Dallas, TX 75235; 214/590-2329

Case Management Demonstration Program for Pediatric Patients & Families in LA County; Dale Garell, M.D., Project Director,

19720 Arrow Highway, Covina, CA 91724; 818/858-2110

[FR Doc. 91-6116 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the *Federal Register* low income levels used by the Public Health Service for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program (section 787), the Program of Financial Aid for Disadvantaged Health Professions Students (section 787(b)), the Scholarships for Undergraduate Education of Professional Nurses Grant program (section 843), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds (section 827). Loans to Disadvantaged Students (section 740(c)), Scholarships for Health Professions Students from Disadvantaged Backgrounds (section 760), Disadvantaged Health Professions Faculty Loan Repayment Program (section 761) were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101-527) and will also be using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 787

Awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, allied health,

chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities that assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Aid for Disadvantaged Health Professions Students (FADHPS), Section 787(b)

Awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance, without a service or financial obligation, to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education.

Scholarships for Undergraduate Education of Professional Nurses (SUEPN), Section 843

Awards grants to accredited schools of nursing to provide financial assistance, with a service obligation, for tuition and fees to individuals who are enrolled as undergraduate nursing students in diploma, associate, or baccalaureate degree programs, or in programs of nursing education leading to a first degree in professional nursing and who are in financial need with respect to attending these schools. Schools must give preference in awarding scholarships to individuals from disadvantaged backgrounds.

Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, Section 827

Awards grants to accredited schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 740(c)

Awards grants to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 760

Awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical

psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment Program, Section 761

Awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least two years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology.

The following income figures were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions and nursing grant programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1990.

| Size of Parents Family ¹ | Income Level ² |
|-------------------------------------|---------------------------|
| 1 | \$8,800 |
| 2 | 11,400 |
| 3 | 13,500 |
| 4 | 17,300 |
| 5 | 20,400 |
| 6 or more | 23,000 |

¹ Includes only dependents listed on Federal income tax forms.

² Rounded to the nearest \$100. Adjusted gross income for calendar year 1990.

Dated: March 11, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91-6178 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service; Office of the Assistant Secretary for Health

Availability of Grants for Minority Community Health Coalition Demonstration Projects

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of availability of funds and request for application for Minority Community Health Coalition Demonstration Project Grants.

AUTHORITY: This program is authorized under section 1707(d) of the Public Health Service Act, as amended in Public Law 101-527.

SUMMARY: The Office of Minority Health announces the availability of grants to provide support, for a period which will not exceed three years, for projects which demonstrate methods of developing community health coalitions which can effectively promote health and effect disease risk factor reduction within minority populations.

ADDRESSES/CONTACTS: Applications must be prepared on form PHS 5161. Application kits may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852, 301/443-9870. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content of the application may be obtained from Ms. Joan S. Jacobs, Office of Minority Health, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852, 301/443-4761. Technical assistance on the business and budget aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, 301/443-9870. Data and referral for additional information which might be useful in preparation of grant applications can be obtained from the Office of Minority Health Resource Center, 1/800/444-6472. Information on a possible series of regional grants writing technical assistance workshops also can be obtained through the OMH Resource Center.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Officer by May 24, 1991. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date, or (2) sent to the above address on or before the deadline date and received in time for submission to the review panel. A legibly dated receipt from the commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

AVAILABILITY OF FUNDS: It is anticipated that the Office of Minority Health will have approximately \$3 million available in Fiscal Year 1991 to support, under this announcement, approximately 15 new awards in the average amount of

\$600,000 each. However, the final number of awards will depend upon funds available.

PERIOD OF SUPPORT: Support may be requested for a total project period up to three years. Non-competing continuation awards for years two and three can be made subject to availability of funds and progress achieved. Annual budgets can be requested up to a total of \$200,000 (direct and indirect costs).

SUPPLEMENTAL INFORMATION: Relation to Goals for the Year 2000.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement, the Minority Community Health Coalition Demonstration Grant Program, is potentially related to a minimum of fifteen of the twenty-two priority areas: (1) Physical activity/fitness, (2) nutrition, (3) tobacco, (4) alcohol and other drugs, (5) violent and abusive disorders, (6) educational and community-based programs, (7) unintentional injuries, (8) occupational safety and health, (9) environmental health, (10) material and infant health, (11) heart disease and stroke, (12) cancer, (13) diabetes and chronic disabling diseases, (14) HIV infection, and (15) sexually transmitted diseases. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone: 202/783-3238).

Background

In a comprehensive review of the health status of U.S. racial minorities, the Secretary's Task Force on Black and Minority Health found a serious health disparity between minorities and the nonminority population. Six health problems were identified as bearing the greatest impact on minority health in terms of causes of death. Every minority group does not suffer from disproportionate impact in each categorical health problem. However, because of their accumulated impact, these six health problems became priority issues areas for Task Force study. Listed in alphabetical order they are: (1) Cancer, (2) cardiovascular disease and stroke, (3) chemical dependency, (4) diabetes, (5) homicide, suicide, and accidents (unintentional injuries), and (6) infant mortality. In

Fiscal Year 1988, the problem of HIV infection and Acquired Immunodeficiency Syndrome (AIDS) was added to these initial six areas, due to the devastating impact of AIDS on minority populations.

Because health promotion/risk reduction programs require influencing behavior which frequently is resistant to change, it is critical that the methods used be sound and acceptable to the target population. Successful programs recognize that the health information/media approach alone is insufficient to motivate, effect, and sustain the desired change in either individual or group behavior. Moreover, even when additional educational interventions (e.g., counseling, workshops) are conducted, conventional health promotion activities are often ineffective in reaching minority populations: too often they disregard ethnic/cultural health beliefs and practices, or community norms which could contribute to or otherwise affect risk factors leading to illness.

The OMH bases this program on the hypothesis that the community coalition approach to risk reduction can be effective in reaching minority target populations—especially those most at risk or especially hard to reach. Among the merits of using coalitions is the higher likelihood that (1) the intervention will be culturally sensitive and credible to the target group, (2) the project will address the health problem(s) within the context of related socio-economic issues, and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. Therefore, the OMH is continuing, through this announcement, to promote the development and implementation of health promotion/disease risk reduction projects which utilize community coalitions.

Although this announcement is the fifth notice for this grant program, it represents a significant expansion/shift in program emphasis. In prior years (FY 1986, 1987, 1988, 1989) only those grant applications that addressed one (or a combination) of the seven specified health areas were judged responsive to program guidelines. Under this announcement, the OMH is encouraging more flexibility for communities in defining their own health problem priorities and providing more time and resources for carrying out projects. The coalition approach to risk reduction intervention is retained, but applications now will be considered in any documented health problem or combination of health problems

impacting a minority population in a defined community.

Moreover, budget levels and the allowable period of support have been increased in recognition of the additional resources and time needed to mount an effective community coalition demonstration project. In addition, in order to facilitate continued financial support beyond the three year project period, annual minimum grantee cost participation levels now are specified.

Definitions

For the purpose of this grant program, the following definitions are provided:

(1) Health problem areas

(a) one of the seven areas identified in the Secretary's Task Force report or by the OMH. They are: (i) Cancer; (ii) cardiovascular disease and stroke; (iii) chemical dependency; (iv) diabetes; (v) homicide, suicide and unintentional injuries; (vi) infant mortality; (vii) HIV infection; or

(b) a disease or health condition which has a demonstrated impact on morbidity rates among the minority population, for example, asthma, hepatitis, sexually transmitted diseases (STDs), tuberculosis.

(2) Risk factor

The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyle and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include for example, tobacco use, dietary habits, obesity, sedentary lifestyle, severe emotional stress, depression, conflict resolution behaviors, abuse of alcohol and drugs, intravenous drug use, late or no prenatal care, teen pregnancy, high risk sexual practices, (e.g., unprotected intercourse with HIV infected persons), no or inadequate access to health care, environmental and occupational hazards.

(3) Intervention

The process of carrying out an action(s) so as to alter or modify the condition or outcome; risk reduction interventions typically are a set of planned activities designed to change behavior so as to lower the likelihood that a preventable health problem will occur or progress further; for health promotion/risk reduction, an intervention is often a combination of clinical preventive services (e.g., blood

pressure screening), information dissemination, environmental modifications, educational activities, and coordinated networking activities among health- and human service-related programs (e.g., referral for child care services, job placement, literacy programs).

(4) Community

A defined geographical area in which persons live, work, and recreate and characterized by: (a) Formal and informal leadership structures for the purpose of maintaining order and improving conditions; and (b) its capacity to serve as a focal point for addressing societal needs including health needs.

(5) Community coalition

The coming together of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

A community coalition

- Assumes a variety of interests and expertise converging on an agreed upon mission. Members must be able and willing to work with one another. Relationships must be formalized through written memoranda of understanding/agreement among each member organization and the coalition, and between members.

- Requires each coalition member organization to bring certain resources (e.g., money, space, staff) to the coalition to enable it to accomplish its mission.

- Requires that at least sixty percent of coalition membership be comprised of minority organizations or minority individuals representative of the target group in the community.

- Requires that each member organization has a specific role within the coalition. The role is to be distinctive among the other members, and each member organization must establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship).

- Requires a sustained commitment on the part of each member organization to participate, at a minimum, over the life of the project.

- Must document its activities to ensure a written history of and thus, a continuity to its work that is not dependent upon the active participation of any single person.

(6) *Minority populations.* As defined by the "Report of the Secretary's Task Force on Black and Minority Health", they include: Asian/Pacific Islanders; Blacks, Hispanics; and Native Americans/Alaska Natives (which include Native Hawaiians).

Applicant Eligibility

Eligible applicants are public and private nonprofit organizations. The applicant organization will be the lead agency for the coalition, will be responsible for management of the project, and will serve as the fiscal agent for the Federal grant awarded.

OMH Program Objectives

The overall goal of the OMH's Minority Community Health Coalition Demonstration grant program is to fund projects which demonstrate the effectiveness of community-based coalitions to have a potential impact on improving the health status of a targeted minority population by conducting or coordinating health promotion and disease risk reduction intervention activities. The target risk factor(s) must be justified on the basis of documented health problem patterns in the locally targeted population. In justifying the health problem/risk factor, applicants are strongly urged to supplement national data with local area and community health or health-related data. In order to maximize both resources and effectiveness, it is suggested that applicants focus on a limited number of risk factor(s) as opposed to attempting an all-inclusive approach.

OMH encourages community coalitions to think imaginatively about the approaches that may be needed to address health issues that affect minority populations. The solutions a community coalition intends to pursue may be innovative ones. Proposed interventions may include educational, social, employment or environmental measures requiring participation, and in-kind or other financial contributions, from organizations other than traditional health or public health providers. Such participants may include: churches, schools, Head Start programs, social service or human service agencies, civic and business organizations, labor unions, voluntary groups, recreation departments, athletic leagues or clubs, youth groups, homeless or runaway shelters, law enforcement agencies, depending on the problems the coalition intends to address, the interventions it sees as necessary, and the presence or interest of community agencies.

Specifically, the OHM anticipates funding projects which:

- (1) Provide documentation of the health problem(s) and risk factor(s) among the locally targeted minority population(s);
- (2) Provide detailed and specific methods for identifying and reaching the target population;
- (3) Provide detailed and specific methods for conducting the health promotion/disease risk reduction intervention and measuring its results;
- (4) Demonstrate a sound composition of, and organization scheme for the coalition, assuring substantive involvement of coalition members, community leaders, and representatives of the target population;
- (5) Evaluate the process of establishing and operating the coalition and how its activities will impact on the intervention;
- (6) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns; and
- (7) Provide evidence of cost participation during the project, and potential sources of financial support for the project at the end of the grant period.

Application Process

Applicants wishing to improve their chances for approval should pay particular attention to the general and supplemental instructions provided in the application kit to ensure that their applications are responsive to each of the following concerns under the following headings:

Project Objectives

1. Clearly describe the goals and objectives of the proposed project, using quantifiable terms;
2. Identify, describe, and document with epidemiologic data the health problem areas and related risk factors in the community and among the local target population;
3. Include realistic timetables for accomplishing the objectives;

Target Population

4. Define the target population(s) and identify which intervention(s) are proposed for which minority group(s); identify the pertinent geographic areas/subareas, providing a map of the county, ward, or census tract, as appropriate;

Coalition

5. Provide evidence that a coalition exists, or that such organizations which have worked together in the past now have a formal commitment to establish one; describe any collaborative efforts

with other organizations serving the target population;

6. Describe in detail the composition (at least 60% minority organizations or minority representatives of the target group), and the organization of the coalition, as well as the respective roles of coalition members and other participants;

Intervention

7. Provide a detailed description of intervention strategies that address the principal objectives of the application and which will result in measurable change/impact on risk factors. (An analysis of medical records of minority individuals, as in a limited clinical trial, is not responsive to this announcement);
8. Describe plans for implementing the intervention(s) presenting, in step-by-step fashion, the specific efforts to be undertaken by each key component of the coalition and how these various efforts will address the problems identified; describe the educational materials to be used and/or developed as well as assurances that their content and delivery will be culturally and, as necessary, linguistically sensitive; describe arrangements, if any, for networking with related human service agencies/programs;

Project Management and Staffing

9. Provide detailed management plans that clearly delineate each coalition member's area of responsibility and how key staff of member organizations will be accountable for carrying out their responsibilities; describe the management experience of the lead agency or organization; describe the experience of coalition member organizations in working together in similar projects; describe plans for continuation of the project beyond the period requested in the application;
10. Describe the duties and requisite qualifications of current staff, and of any staff and any consultant positions to be filled after the grant award;
11. Identify and provide supporting documentation (e.g., resumes, curriculum vitae) for each individual proposed for key staff positions to demonstrate appropriate experience and qualifications. Representatives of the target population with experience in community-based and/or health promotion programs are particularly well suited;

Evaluation

12. Applications must provide a plan for evaluating whether the proposed project achieved its objectives. Describe the process and outcome indicators

which will be used to determine whether the project's objectives have been met. Also, provide an approach for obtaining information on the following questions:

(a) What interventions are being provided and to whom?, (b) what are the factors that facilitate or inhibit the implementation of the coalition?, (c) what are the factors that facilitate or inhibit the implementation of the intervention?, (d) in what ways can implementation of the coalition's interventions be improved?, (e) what factors facilitate or inhibit the sustainability of the coalition?, and (f) what is the evidence that the intervention will continue beyond the period of grant support?

Project Budgets

Funds up to \$200,000 total direct and indirect costs per year may be requested to cover: the cost of personnel to coordinate the coalition's activities; consultants; support services; materials; and justified travel. Funds may not be used for building alterations and renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project.

Cost Participation

A portion of the project's costs must be borne by coalition members or by other nonfederal sources such as business, labor, local government, or community funds. Cost participation may be in the form of direct costs or in-kind contributions. The required levels of nonfederal cost participation are as follows: At least 25 percent (up to \$50,000) of the requested amount for year one; at least 40 percent (up to \$80,000) of the requested amount for year two; and 50 percent (up to \$100,000) of the requested amount for year three.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete or non-responsive to the announcement will be returned. Applications judged to be complete and responsive will be reviewed for technical merit in accord with PHS policies.

Applications will be evaluated by non-federal reviewers chosen for their expertise in minority health, experience with similar projects, and their understanding and special knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Review Criteria

Applications will be reviewed and evaluated in terms of whether the

evidence presented in the application meets OMH program objectives. Of specific importance will be the following criteria under the listed headings. (An indication of the quantitative weight appears in parentheses after each heading):

Project Objectives (50%)

- The technical merit of the described proposed project, and the consistency of the project's goals and objectives with those of OMH in general, and this announcement in particular.

- The justification for the choice of health problem(s) and risk factor(s) to be targeted, and their direct relationship to the epidemiologic characterization(s) of the target minority population in the specified geographic area.

- Evidence that a viable coalition exists or that one will be established as indicated by the degree of commitment of each member organization, including the amount or extent of support to cover a portion of project needs.

- The degree to which the composition of coalition membership is representative of the target population (60%) as well as a logical choice based on the target risk factor(s) and intervention(s) to be demonstrated.

- Coherence, feasibility, and realistic approach of the intervention strategy and of the implementation methods described. The degree of specificity in the description of the intervention and of networking approaches will be given significant weight in the review of the application.

Project Management and Staffing (25%)

- Adequacy of qualifications, time allocations, and representativeness of proposed project staff, both paid and voluntary.

- Adequacy of the proposed program and technical management plans for the project.

- Appropriateness of relevant experience and qualifications of managers of the applicant organization to provide administrative and fiscal management of the grant.

- Likelihood that the project will continue beyond the three year funded project period.

Evaluation (25%)

- Adequacy of the evaluation plan in describing the project's objectives in quantifiable terms.

- Adequacy of the evaluation plan in describing the process and outcome indicators which will be used to determine whether the project's objectives are met.

- Adequacy of the evaluation plan in providing an approach for obtaining

information on the questions stated in this program announcement.

- Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations.

Award Criteria

Grants awarded under this announcement are not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA is to be targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to achieve geographic and ethnic distribution as well as cover the various health problems identified affecting minorities.

Funding decisions will be determined by the Office of Minority Health and will be based on: the recommendations/ratings of review panels and program balance, including geographic and race/ethnicity factors. Also, the availability of funds will be a factor and will govern how many projects will be funded.

State Reviews

Executive Order 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. SPOCs will have 60 days to provide comments. SPOC comments must be received by July 23, 1991. The Office of Minority Health does not guarantee to accommodate or explain for State process recommendations it receives after that date. SPOC comments are to be sent to: Office of Minority Health, Grants Management Officer, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852.

The Catalog of Federal Domestic Assistance Number for the program is 93.137.

Dated: March 8, 1991.

William A. Robinson,
Deputy Assistant Secretary for Minority Health.

[FR Doc. 91-6184 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, the Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on March 1, 1991. (Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Statement of Claimant or Other Person—0960-0045—The information collected on the form SSA-795 is used by the Social Security Administration (SSA) to document special circumstances in connection with a claim for benefits. The affected public consists of claimants or other persons who need to provide information to SSA is not asked for on other forms.

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 76,375 hours.

2. Representative Payee Questionnaire(s)-Individual-Institution—0960-NEW—The information on forms SSA-622 and SSA-6220 will be used by the Social Security Administration to initially load its "Master Representative Payee File" which is now required by law. The respondents will consist of individuals or institutions/agencies who serve as representative payees for persons receiving Social Security benefits.

Number of Respondents: 5,000,000.

Frequency of Response: one time only.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 416,667 hours.

3. We published a revision to 20 CFR 404, subpart M in the *Federal Register* on August 29, 1988 (53 FR 32976). Several Sections in the subpart contained reporting and recordkeeping requirements requiring Office of Management and Budget (OMB) approval. Through oversight, the OMB control number and the period of approval were not provided for the CFR. OMB approved these reporting and recordkeeping requirements under control number 0960-0425 on 12/02/88. The approval is effective through 11/30/91.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 8, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-6114 Filed 3-14-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-17]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 15, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OC (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of

the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the *Federal Register* identifying the properties determined as suitable.

All properties in today's Notice were published during 1990. These properties have been reviewed for suitability for use as facilities to assist the homeless and are being republished as part of HUD's complete resurvey of Federal landholding agencies. The properties identified as suitable in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such

written expressions of interest within 60 days from the date of this Notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's **Federal Register Notice** on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This Notice also includes a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, HQ-USA/LEER, Washington, DC 20332-5000; (202) 767-4191. (These are not toll-free numbers.)

Dated: March 8, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

SUITABLE/AVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Air Force

Bldg. 604

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010237
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 605

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010238
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 612

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010239
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 611

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010240
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 613

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010241
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 614

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010242
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 615

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010243
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 616

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010244
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 617

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010245
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Bldg. 618

Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010246
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame;
most recent use—housing.

Navy

Bldg. 102

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010260
Status: Unutilized
Base Closure: No
Comment: 580 sq. ft.; 1 story permanent bldg;
possible asbestos; secure facility with
alternate access; most recent use—office

Bldg. 103

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010261
Status: Unutilized
Base Closure: No
3675 sq. ft.; 1 story permanent bldg; possible
asbestos; secure facility with alternate
access; most recent use—dining hall.

Bldg. 109

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010262
Status: Unutilized
Base Closure: No
Comment: 1045 sq. ft.; 2 story permanent bldg;
possible asbestos; secure facility with
alternate access; most recent use—
barracks.

Bldg. 110

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010263
Status: Unutilized
Base Closure: No
Comment: 4439 sq. ft.; 1 story permanent bldg;
possible asbestos; secure facility with
alternate access; most recent use—shop.

Bldg. 113

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010264
Status: Unutilized
Base Closure: No
Comment: 100 sq. ft.; 1 story permanent bldg;
secured facilities with alternate access;
most recent use—storage.

Bldg. 138

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010265
Status: Unutilized
Base Closure: No
Comment: 110 sq. ft.; 1 story permanent bldg;
possible asbestos; secure facility with
alternate access; most recent use—filling
station.

Bldg. 144

Naval Facilities Point Sur

CVB Detachment

Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010266
Status: Unutilized

Base Closure: No
 Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.

Bldg. 145

Naval Facilities Point Sur
 CVB Detachment

Monterey, CA, Co: Monterey 93940-

Federal Register Notice Date: 03/15/91

Property Number: 779010267

Status: Unutilized

Base Closure: No

Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Suitable Land (by Agency)

Air Force

Camp Kohler Annex

McClellan AFB

Sacramento, CA, Co: Sacramento 95652-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010045

Status: Excess

Base Closure: No

Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Suitable Buildings (by Agency)

Hawes Site (KHGM)

March AFB

Hinckley, CA, Co: San Bernardino

Federal Register Notice Date: 03/15/91

Property Number: 189010084

Status: Unutilized

Base Closure: No

Comment: 9290 sq. ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Suitable Land (by Agency)

Navy

Naval Ocean Systems Center

271 Catalina Blvd.

San Diego, CA, Co: San Diego 92106-

Federal Register Notice Date: 03/15/91

Property Number: 779010094

Status: Excess

Base Closure: No

Comment: 16 acres, possible antenna radiation, secured facility with alternative access.

Air Force

60 ARG/DE

Travis ILS Outer Marker Annex

Rio-Dixon Road

Travis AFB, CA, Co: Solano 94535-5496

Location: State Highway 113

Federal Register Notice Date: 03/15/91

Property Number: 189010189

Status: Excess

Base Closure: No

Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Universe of Properties:

| | |
|-------------------------|----|
| Total..... | 22 |
| Suitable..... | 22 |
| Suitable Buildings..... | 19 |
| Suitable Land..... | 3 |
| Unsuitable..... | 0 |

| | |
|-----------------------------|---|
| Unsuitable Buildings..... | 0 |
| Unsuitable Land..... | 0 |
| Number of Resubmission..... | 0 |

Colorado

Suitable Land (by Agency)

Air Force

NTMU—Partial Area

Lowry Air Force Base

Denver, CO, Co: Denver 80230-5000

Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary.

Federal Register Notice Date: 03/15/91

Property Number: 189010254

Status: Excess

Base Closure: No

Comment: Approximately 20 acres; sloping parts in area.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base

Grid R-2 to R-3 to V-4 to V-1

Kings Bay, GA, Co: Camden 31547-

Federal Register Notice Date: 03/15/91

Property Number: 779010229

Status: Underutilized

Base Closure: No

Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Guam

Suitable Land (by Agency)

Air Force

Annex 1

Andersen Communication

Dededo, GU, Co: Guam 96912-

Location: In the municipality of Dededo.

Federal Register Notice Date: 03/15/91

Property Number: 189010427

Status: Underutilized

Base Closure: No

Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)

Andersen Petroleum Storage

Dededo, GU, Co: Guam 96912-

Location: In the municipality of Dededo.

Federal Register Notice Date: 03/15/91

Property Number: 189010428

Status: Underutilized

Base Closure: No

Comment: 35 acres; subject to utilities easements.

Suitable Buildings (by Agency)

Anderson VOR

In the municipality of Dededo

Dededo, GU, Co: Guam 96912-

Location: Access is through Route 1 and

Route 3, Marine Drive.

Federal Register Notice Date: 03/15/91

Property Number: 189010267

Status: Unutilized

Base Closure: No

Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex

In the municipality Dededo

Dededo, GU, Co: Guam 96912-

Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.

Federal Register Notice Date: 03/15/91

Property Number: 189010268

Status: Unutilized

Base Closure: No

Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4

Anderson Family Housing

Municipality of Dededo

Dededo, GU, Co: Guam 96912-

Location: Access is through Route 1, Marine Drive.

Federal Register Notice Date: 03/15/91

Property Number: 189010545

Status: Underutilized

Base Closure: No

Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Universe of Properties:

| | |
|-----------------------------|---|
| Total..... | 5 |
| Suitable..... | 5 |
| Suitable Buildings..... | 3 |
| Suitable Land..... | 2 |
| Unsuitable..... | 0 |
| Unsuitable Buildings..... | 0 |
| Unsuitable Land..... | 0 |
| Number of Resubmission..... | 0 |

Idaho

Suitable Buildings (by Agency)

Air Force

Bldg. 121

Mountain Home Air Force Base

Main Avenue

(See County), ID, Co: Elmore 83648-

Federal Register Notice Date: 03/15/91

Property Number: 189030007

Status: Excess

Base Closure: No

Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Illinois

Suitable Buildings (by Agency)

Air Force

Bldgs. 9, 11-14, 21-24, 32, 33, 35, 37, 39, 41, 49, 51, 53, 55-71, 73-75, 77-84, 87, 89, 92, 93, 95-97, 99, 103, 107, 111-113, 119, 122-124, 126, 130, 132-136, 138, 140, 141, 145, 146, 150, 152, 154

Chanute Air Force Base

Chapman Courts

Rantoul, IL, Co: Champaign 61866-

Federal Register Notice Date: 03/15/91

Property Numbers: 189030224-189030301

Status: Unutilized

Base Closure: No

Comment: 2-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.

Bldgs. 2, 4, 6-8, 125, 127-129, 131, 153

Chanute Air Force Base

Chapman Courts

Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Numbers: 189030302-189030312
Status: Unutilized
Base Closure: No
Comment: 4-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.

Bldgs. 15, 17-20, 26, 27, 29-31, 38, 40, 42-45, 47, 52, 54, 72, 85, 86, 90, 91, 102, 106, 114, 115, 120, 144
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Number: 189030313-189030342
Status: Unutilized
Base Closure: No
Comment: 1-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.

Bldg. 5
Chanute Air Force Base Annex
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Number: 189030343
Status: Unutilized
Base Closure: No
Comment: 2707 sq. ft.; 1 story wood frame; termite damage; possible asbestos; needs major rehab; possible easement restriction; most recent use—administrative office.

Bldg. 732
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Number: 189030344
Status: Unutilized
Base Closure: No
Comment: 13336 sq. ft.; 2 story wood frame; needs structural repairs; most recent use—warehouse.

Bldg. 118
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Number: 189030345
Status: Unutilized
Base Closure: No
Comment: 3996 sq. ft.; 1 story wood frame; needs structural repairs; most recent use—band facility.

Bldg. 107
Chanute Air Force Base
Falcon Street
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 03/15/91
Property Number: 189030346
Status: Unutilized
Base Closure: No
Comment: 17118 sq. ft.; 1 story wood frame; needs rehab; potential utilities; most recent use—cold storage.

Navy
Bldg. 800B
Naval Training Center
Tool Storage Shed
Great Lakes, IL, Co: Lake 60083-5000
Federal Register Notice Date: 03/15/91
Property Number: 779010274
Status: Excess

Base Closure: No
Comment: 444 sq. ft.; 1 story; needs major rehab; most recent use—storage.

Suitable Land (by Agency)
Libertyville Training Site
Libertyville, IL, Co: Lake 60048-
Federal Register Notice Date: 03/15/91
Property Number: 779010073
Status: Excess
Base Closure: No
Comment: 114 acres; possible radiation hazard; existing FAA use license.
Universe of Properties:
Total.....125
Suitable.....125
Suitable Buildings.....124
Suitable Land.....1
Unsuitable.....0
Unsuitable Buildings.....0
Unsuitable Land.....0
Number of Resubmission.....0

Louisiana
Suitable Buildings (by Agency)
Air Force
Barksdale Radio Beacon Annex
Curtis, LA, Co: Bossier
Location: 7 miles south of Bossier City on highway 71 south; left 1 1/4 miles on highway C1552.
Federal Register Notice Date: 03/15/91
Property Number: 189010269
Status: Unutilized
Base Closure: No
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maryland
Suitable Land (by Agency)
Navy
White Oak Lab
Navy Surface Warfare Center
10901 New Hampshire Avenue
Silver Spring, MD, Co: Prince Georges 20903-
Federal Register Notice Date: 03/15/91
Property Number: 779010068
Status: Excess
Base Closure: No
Comment: 16.5 acres; most recent use—buffer; secure area—access can be provided by relocation of fences.

Suitable Buildings (by Agency)
Bldgs. 738-797
Naval Air Test Center
Patuxent River, MD, Co: St. Mary's 20607-
Federal Register Notice Date: 03/15/91
Property Numbers: 779010080-779010090, 779010092, 779010093, 779010095, 779010096, 779010098, 779010100, 779010102-779010106, 779010108, 779010113, 779010115, 779010116, 779010118, 779010119, 779010121, 779010122, 779010124, 779010125, 779010127, 779010129-779010155
Status: Unutilized
Base Closure: No
Comment: One story residential building; utilities disconnected; needs rehab; requires alternate access off state highway. Friable asbestos present.
Universe of Properties:
Total.....61
Suitable.....61

Suitable Buildings.....60
Suitable Land.....1
Unsuitable.....0
Unsuitable Buildings.....0
Unsuitable Land.....0
Number of Resubmission.....0

Maine
Suitable Buildings (by Agency)
Air Force
Bldgs. 1-16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook 04750-
Federal Register Notice Date: 03/15/91
Property Numbers: 189010590-189010605
Status: Excess
Base Closure: No
Comment: 1116 sq. ft. each; 1 story frame residences; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Suitable Land (by Agency)
Navy
Naval Air Station
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland 04053-
Federal Register Notice Date: 03/15/91
Property Number: 779010111
Status: Underutilized
Base Closure: No
Comment: 66.13 acres, most recent use—transmitter station.

Suitable Buildings (by Agency)
Naval Air Station
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland 04053-
Federal Register Notice Date: 03/15/91
Property Number: 779010110
Status: Underutilized
Base Closure: No
Comment: 7,270 sq. ft., 1 story bldg. most recent use—storage, structural deficiencies.
Universe of Properties:
Total.....18
Suitable.....18
Suitable Buildings.....17
Suitable Land.....1
Unsuitable.....0
Unsuitable Buildings.....0
Unsuitable Land.....0
Number of Resubmission.....0

Michigan
Suitable Land (by Agency)
Air Force
Facility 93359
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010058
Status: Excess
Base Closure: No
Comment: 2.52 acres; utilities & sanitary facilities.
Facility 93361
Bayshore RBS
Det 6, 1st Combat Evaluation Group

Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010061
Status: Excess
Base Closure: No
Comment: 0.14 acres, access gained through Air Force controlled property.

Suitable Buildings (by Agency)

Bldg. 7348
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010044
Status: Excess
Base Closure: No
Comment: 225 sq ft., 1 story wood frame, needs rehab, most recent use—storage.

Bldg. 7352
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010046
Status: Excess
Base Closure: No
Comment: 25 sq ft., 1 story wood, most recent use—storage.

Bldg. 7354
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010049
Status: Excess
Base Closure: No
Comment: 25 sq ft., 1 story wood, most recent use—storage.

Bldg. 7357
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010051
Status: Excess
Base Closure: No
Comment: 1,080 sq ft., 1 story wood/frame/block, most recent use—hobby shop/recreation center.

Bldg. 7358
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmet 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010055
Status: Excess
Base Closure: No
Comment: 96 sq ft., 1 story wood/concrete, most recent use—hazard storage.

Bldg. 5043
 Bayshore RBS
 Det 6, 1st Combat Evaluation Group
 Bay Shore, MI, Co: Emmett 49711-
Federal Register Notice Date: 03/15/91
Property Number: 189010065
Status: Excess
Base Closure: No
Comment: 694 sq. ft., 1 story concrete/block, 134 sq. ft.; latrine with separate entrance.

Suitable Land (by Agency)

Tract A-100E
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010109
Status: Excess
Base Closure: No
Comment: .5 acres; used as entrance road for Port Austin AFS; easement and right of way rights need to be negotiated.

Tract A-100
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010111
Status: Excess
Base Closure: No
Comment: 30.80 acres; existing easements for utilities, etc.

Tract A-101
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010112
Status: Excess
Base Closure: No
Comment: 10.0 acres; existing easements for utilities, etc.

Tract A-101E
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010114
Status: Excess
Base Closure: No
Comment: 1.0 acres; 1320 ft long and 33.5 wide; easement and right of way rights need to be negotiated.

Tract A-102E
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010116
Status: Excess
Base Closure: No
Comment: 1.21 acres; 50 ft wide and 1050 ft in length; portion used as drainage easement.

Tract A-108-1E
 Port Austin AFS
 Port Austin Township, MI, Co: Huron
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010117
Status: Excess
Base Closure: No
Comment: 4.0 acres; portion used as drainage easement.

Tract A-108-2E
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91
Property Number: 189010119
Status: Excess
Base Closure: No
Comment: 4.55 acres; portion used as drainage ditch.

Tract A-103
 Port Austin AFS
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010121
Status: Excess
Base Closure: No
Comment: 5.30 acres

Suitable Buildings (by Agency)

Bldg. 1
 Port Austin AFS
 754th RADS (TAC)
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010006
Status: Excess
Base Closure: No
Comment: 6642 sq. ft.; 1 story concrete block; possible asbestos; most recent use—library/arts/crafts & storage.

Bldg. 2
 Port Austin AFS
 754th RADS (TAC)
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010007
Status: Excess
Base Closure: No
Comment: 1546 sq. ft.; 1 story concrete bldg; possible asbestos; most recent use—sales store.

Bldg. 3
 Port Austin AFS
 754th RADS (TAC)
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010008
Status: Excess
Base Closure: No
Comment: 7650 sq. ft.; 1 story concrete block; possible asbestos; most recent use—maintenance shop and commissary.

Bldg. 4
 Port Austin AFS
 754th RADS (TAC)
 Port Austin Township, MI, Co: Huron 48467-8195
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010009
Status: Excess
Base Closure: No
Comment: 120 sq. ft.; 1 story concrete block; most recent use—storage.

Bldg. 5
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91
Property Number: 189010010

Status: Excess

Base Closure: No

Comment: 3139 sq. ft.; 1 story concrete & wood; possible asbestos; most recent use—NCO Club.

Bldg. 6

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010021

Status: Excess

Base Closure: No

Comment: 2,855 sq. ft.; 2 story concrete/block/wood; possible asbestos; most recent use—dorm.

Bldg. 7

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010023

Status: Excess

Base Closure: No

Comment: 144 sq. ft.; 1 story story block-3 sections; most recent use—storage.

Bldg. 10

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010024

Status: Excess

Base Closure: No

Comment: 1000 sq. ft.; 1 story concrete, would need furnace, most recent use—automotive/hobby shop.

Bldg. 11

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010025

Status: Excess

Base Closure: No

Comment: 1547 sq. ft.; 1 story concrete, no windows, tunnel type entrance, most recent use—troop shelter.

Bldg. 12

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010028

Status: Excess

Base Closure: No

Comment: 3630 sq. ft., 5 story tower with freight elevator.

Bldg. 13

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010027

Status: Excess

Base Closure: No

Comment: 1364 sq. ft., 1 story concrete, most recent use—storage.

Bldg. 15

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010028

Status: Excess

Base Closure: No

Comment: 2855 sq. ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 16

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010029

Status: Excess

Base Closure: No

Comment: 2855 sq. ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 17

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010030

Status: Excess

Base Closure: No

Comment: 2855 sq. ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 18

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010031

Status: Excess

Base Closure: No

Comment: 2802 sq. ft., 1 story concrete, most recent use—vehicle maintenance shop.

Bldg. 19

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010032

Status: Excess

Base Closure: No

Comment: 2304 sq. ft., 1 story concrete, most recent use—heat plant.

Bldg. 20

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010033

Status: Excess

Base Closure: No

Comment: 3547 sq. ft., 1 story concrete, most recent use—dining hall.

Bldg. 23

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010034

Status: Excess

Base Closure: No

Comment: 576 sq. ft., 1 story concrete, most recent use—water supply building.

Bldg. 24

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010035

Status: Excess

Base Closure: No

Comment: 87 sq. ft., 1 story concrete, most recent use—water pump station.

Bldg. 25

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010036

Status: Excess

Base Closure: No

Comment: 114 sq. ft., 1 story concrete, most recent use—water pump station.

Bldg. 26

Port Austin AFS

754th RADS (TAC)

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010037

Status: Excess

Base Closure: No

Comment: 3221 sq. ft., 2 story wood/concrete, most recent use—combination officers quarters and medical/dental clinic.

Bldg. 28
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010038
Status: Excess
Base Closure: No
Comment: 2084 sq ft., 1 story concrete, most recent use—bowling alley.

Bldg. 29
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010039
Status: Excess
Base Closure: No
Comment: 3907 sq ft., 1 story concrete/metal/steel, designed to be a power plant.

Bldg. 30
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010040
Status: Excess
Base Closure: No
Comment: 2178 sq ft., 2 story concrete, open at bottom, top floor no roof, radar tower.

Bldg. 31
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010041
Status: Excess
Base Closure: No
Comment: 114 sq ft., 1 story concrete, most recent use—water pump station.

Bldg. 32
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010042
Status: Excess
Base Closure: No
Comment: 2,466 sq ft., 1 story concrete block, most recent use—office.

Bldg. 33
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010043
Status: Excess

Base Closure: No
Comment: 1,621 sq ft., 1 story concrete, most recent use—supply warehouse.

Bldg. 34
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010086
Status: Excess
Base Closure: No
Comment: 1972 sq ft., 1 story concrete.

Bldg. 35
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010088
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 36
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010091
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 37
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010092
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 38
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010093
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 39
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010094
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 40
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91
Property Number: 189010095
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 41
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010096
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 139
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010097
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story preframe wood; potential use for storage; no utilities.

Bldg. 42
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010098
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 140
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010099
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 43
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010100
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 141
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010101
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 142
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010102
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 143
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010103
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 144
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010104
Status: Excess
Base Closure: No
Comment: 45 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 145
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010105
Status: Excess
Base Closure: No
Comment: 45 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Telephone Co. Facility
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010106
Status: Excess
Base Closure: No
Comment: 440 sq. ft., 1 story possible asbestos.

Recreation/Gym Bldg.
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010107
Status: Excess
Base Closure: No
Comment: 5899 sq ft., 1 story plus mezzanine.

Bldg. 44
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010108
Status: Excess
Base Closure: No
Comment: 108 sq ft., 1 story concrete, most recent use—sewage pump station, potential for storage, no utilities.

Bldg. 46
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010110
Status: Excess
Base Closure: No
Comment: 2924 sq ft., 1 story circular structure, limited utilities.

Bldg. 48
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010113
Status: Excess
Base Closure: No
Comment: 120 sq ft., 1 story wood/concrete, potential utilities.

Bldg. 50
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010115
Status: Excess
Base Closure: No
Comment: 1922 sq ft., 1 story concrete block/most recent use—communications transmitter/receiver building.

Bldg. 51
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010118
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, most recent use—garage, limited utilities.

Bldg. 52
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010120
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 53
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91
Property Number: 189010122
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 54
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010123
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 55
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010124
Status: Excess
Base Closure: No
Comment: 336 sq ft., 1 story frame/cement, limited utilities.

Bldg. 75
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010125
Status: Excess
Base Closure: No
Comment: 384 sq ft., 1 story frame, most recent use—fire hose storage potential use for storage.

Bldg. 103
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010126
Status: Excess
Base Closure: No
Comment: 192 sq ft., 1 story wood, most recent use—waste oil.

Bldg. 135
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010127
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood, no utilities, potential use for storage.

Bldg. 136
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010128

Status: Excess

Base Closure: No

Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 137

Port Austin AFS

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010129

Status: Excess

Base Closure: No

Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 138

Port Austin AFS

Port Austin Township, MI, Co: Huron 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91

Property Number: 189010130

Status: Excess

Base Closure: No

Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 22

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010777

Status: Excess

Base Closure: No

Comment: 1546 sq. ft., 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010779

Status: Excess

Base Closure: No

Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010780

Status: Excess

Base Closure: No

Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010781

Status: Excess

Base Closure: No

Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010782

Status: Excess

Base Closure: No

Comment: 4017 sq. ft., 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 1890107834

Status: Excess

Base Closure: No

Comment: 3674 sq. ft., 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010784

Status: Excess

Base Closure: No

Comment: 7216 sq. ft., 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010785

Status: Excess

Base Closure: No

Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 97

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010829

Status: Excess

Base Closure: No

Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Suitable Land (by Agency)

Calumet Air Force Station

Section 1, T57N, R31W

Houghton Township

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010862

Status: Excess

Base Closure: No

Comment: 34 acres; potential utilities.

Calumet Air Force Station

Section 31, T58N, R30W

Houghton Township

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010863

Status: Excess

Base Closure: No

Comment: 3.78 acres; potential utilities.

Suitable Buildings (by Agency)

Bldg. 21

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010776

Status: Excess

Base Closure: No

Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 46

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010786

Status: Excess

Base Closure: No

Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010787

Status: Excess

Base Closure: No

Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010788

Status: Excess

Base Closure: No

Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010789

Status: Excess

Base Closure: No

Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 16

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Number: 189010834

Status: Excess

Base Closure: No

Comment: 3000 sq. ft.; 1 floor; concrete block; most recent use—commissary facility.

Bldgs. 9-13

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Numbers: 189010835-189010839

Status: Excess

Base Closure: No

Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5-8

Calumet Air Force Station

Calumet, MI, Co: Keweenaw 49913-

Federal Register Notice Date: 03/15/91

Property Numbers: 189010840-189010843

Status: Excess

Base Closure: No

Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4

Calumet Air Force Station

Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010844
Status: Excess
Base Closure: No
Comment: 2340 sq. ft.; 1 floor concrete block;
 most recent use—heating facility.

Bldg. 3
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010845
Status: Excess
Base Closure: No
Comment: 5314 sq. ft.; 1 floor concrete block;
 possible asbestos; most recent use—
 maintenance shop and office.

Bldg. 1
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010846
Status: Excess
Base Closure: No
Comment: 4528 sq. ft.; 1 floor concrete block;
 possible asbestos; most recent use—office.

Bldgs. 216-224, 211-214
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010847-189010855,
 189010858-189010861
Status: Excess
Base Closure: No
Comment: 780 sq. ft. each; 1 story wood frame
 housing garage.

Bldg. 215
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010856
Status: Excess
Base Closure: No
Comment: 390 sq. ft.; 1 story wood frame
 housing garage.

Bldg. 158
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010857
Status: Excess
Base Closure: No
Comment: 3603 sq. ft.; 1 story; concrete/steel;
 possible asbestos; most recent use—
 electrical power station.

Bldg. 15
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010864
Status: Excess
Base Closure: No
Comment: 538 sq. ft.; 1 floor; concrete/wood
 structure; potential utilities; most recent
 use—gymnasium facility.

Bldgs. 23-24
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010865-189010866
Status: Excess
Base Closure: No
Comment: 44 sq. ft. each; 1 story; metal frame;
 prior use—storage of fire hoses.

Bldgs. 31-35
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010867-189010871
Status: Excess
Base Closure: No
Comment: 36 sq. ft. each; 1 story; metal frame;
 prior use—storage of fire hoses.

Bldgs. 36-37, 39, 201-207
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010872-189010885
Status: Excess
Base Closure: No
Comment: 25 sq. ft. each; 1 floor metal frame;
 prior use—storage of fire hoses.

Bldg. 153
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 3/15/91
Property Number: 189010886
Status: Excess
Base Closure: No
Comment: 4314 sq. ft.; 2 story concrete block
 facility; (radar tower bldg.) potential use—
 storage.

Bldg. 154
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 3/15/91
Property Number: 189010887
Status: Excess
Base Closure: No
Comment: 8960 sq. ft.; 4 story concrete block
 facility; (radar tower bldg.) potential use—
 storage.

Bldg. 157
 Calumet Air Force Station
 Calumet MI, Co: Keweenaw 49913-
Federal Register Notice Date: 3/15/91
Property Number: 189010888
Status: Excess
Base Closure: No
Comment: 3744 sq. ft.; 1 story concrete/steel
 facility; (radar tower bldg.) potential use—
 storage.

Universe of Properties:
 Total.....182
 Suitable.....182
 Suitable Buildings.....170
 Suitable Land.....12
 Unsuitable.....0
 Unsuitable Buildings.....0
 Unsuitable Land.....0
 Number of Resubmission.....0

New Mexico

Suitable Buildings (by Agency)

Navy
Bldg. 1 and 4
 U.S. Navy Reserve Center
 512 N 12th Street
 Carlsbad, NM, Co: Eddy 88220-3046
Federal Register Notice Date: 3/15/91
Property Number: 779040001
Status: Excess
Base Closure: No
Comment: 2460 sq. ft.; one story; frame/
 concrete block bldg; most recent use—
 office; presence of asbestos; and 152 sq. ft.
 metal storage shed on 1.03 acres.

Texas

Suitable Land (by Agency)

Navy
Peary Place #2
 Naval Air Station
 Corpus Christi, TX, Co: Nueces 78419-5000
Federal Register Notice Date: 3/15/91
Property Number: 779030001
Status: Excess
Base Closure: No
Comment: 43.48 acres; 60% of land under
 lease until 8/93.

Suitable Buildings (by Agency)

Peary Place #1
 Naval Air Station
 Corpus Christi, TX, Co: Nueces 78419-5000
Federal Register Notice Date: 3/15/91
Property Number: 779030002
Status: Excess
Base Closure: No
Comment: 9160 sq. ft.; 1 story; possible
 asbestos; most recent use—remote
 transmitter site.

Universe of Properties:

Total.....2
 Suitable.....2
 Suitable Buildings.....1
 Suitable Land.....1
 Unsuitable.....0
 Unsuitable Buildings.....0
 Unsuitable Land.....0
 Number of Resubmission.....0

Virginia

Suitable Buildings (by Agency)

Navy
Naval Medical Clinic
 650 Hampton Blvd.
 Norfolk, VA, Co: Norfolk 23508-
Federal Register Notice Date: 3/15/91
Property Number: 779010109
Status: Unutilized
Base Closure: No
Comment: 3665 sq. ft., 1 story, possible
 asbestos, most recent use—laundry.

Universe of Properties:

Total.....1
 Suitable.....1
 Suitable Buildings.....1
 Suitable Land.....0
 Unsuitable.....0
 Unsuitable Buildings.....0
 Unsuitable Land.....0
 Number of Resubmission.....0

SUITABLE/UNAVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Navy
Bldg. 100
 Naval Facilities Point Sur
 CVB Detachment
 Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010259
Status: Unutilized
Base Closure: No
Comment: 2628 sq. ft. 1 story permanent bldg;
 possible asbestos; secure facility with
 alternate access; use—office space.

Suitable Land (by Agency)

Air Force

Norton Com. Facility Annex

Norton AFB

Sixth and Central Streets

Highland, CA, Co: San Bernadino 92409-5045

Federal Register Notice Date: 03/15/91

Property Number: 189010194

Status: Excess

Base Closure: No

Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Suitable Buildings (by Agency)

Bldg. 540

Vandenberg Air Force Base

Off Coast Road

Vandenberg AFB, CA, Co: Santa Barbara 93437-

Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010581

Status: Unutilized

Base Closure: No

Comment: 384 sq. ft.; 1 story concrete/sheet metal; needs rehab; most recent use—locomotive maintenance/supply building; potential use—storage.

Universe of Properties:

| | |
|-----------------------------|---|
| Total..... | 3 |
| Suitable..... | 3 |
| Suitable Buildings..... | 2 |
| Suitable Land..... | 1 |
| Unsuitable..... | 0 |
| Unsuitable Buildings..... | 0 |
| Unsuitable Land..... | 0 |
| Number of Resubmission..... | 0 |

Florida

Suitable Land (by Agency)

Navy

Naval Public Works Center

Naval Air Station

Pensacola, FL, Co: Escambia 32508-

Location: Southeast corner of Corey station—next to family housing.

Federal Register Notice Date: 03/15/91

Property Number: 779010157

Status: Unutilized

Base Closure: No

Comment: 22 acres.

Air Force

Eglin AFB

S½, SW¼, Sect. 18, T2S R25W

Mary Esther, FL, Co: Okaloosa 32569-

Location: North side of US Highway 98

Federal Register Notice Date: 03/15/91

Property Number: 189010133

Status: Excess

Base Closure: No

Comment: 49 acres, Parcel 3; Flat, cleared land; previous use—buffer safety zone; county has license to construct sewage treatment facility on land.

Eglin AFB

Mossy Head, FL, Co: Walton 32533-

Location: NW quadrant of Florida Highway

285 and I-10. Bounded on the North by

Louisville RR near Mossy Head, Florida.

Federal Register Notice Date: 03/15/91

Property Number: 189010134

Status: Excess

Base Closure: No

Comment: 50 acres; Parcel 9; previous buffer zone; potential utilities.

Eglin AFB

Mossy Head, FL, Co: Walton 32533-

Location: NE quadrant of Florida Highway

285, I-10 intersection. Bounded on the

North by Louisville and Nashville RR near

Mossy Head, Florida.

Federal Register Notice Date: 03/15/91

Property Number: 189010135

Status: Excess

Base Closure: No

Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.

Eglin AFB

Mossy Head, FL, Co: Walton 32533-

Location: Approximately 1 mile east of

Florida Highway 285 and US Highway 90

on north side.

Federal Register Notice Date: 03/15/91

Property Number: 189010136

Status: Excess

Base Closure: No

Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.

Universe of Properties:

| | |
|-----------------------------|---|
| Total..... | 5 |
| Suitable..... | 5 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 5 |
| Unsuitable..... | 0 |
| Unsuitable Buildings..... | 0 |
| Unsuitable Land..... | 0 |
| Number of Resubmission..... | 0 |

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base

Grid AA-1 to AA-4 to EE-7 to FF-2

Kings Bay, GA, Co: Camden 31547-

Federal Register Notice Date: 03/15/91

Property Number: 779010255

Status: Underutilized

Base Closure: No

Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Air Force

Robins Air Force Base

1600 Area No. Davis Drive

Warner Robins, GA, Co: Houston 31098-

Federal Register Notice Date: 03/15/91

Property Number: 189010214

Status: Excess

Base Closure: No

Comment: Approximately 70 acres; potential utilities; paved roads and parking areas.

Suitable Buildings (by Agency)

Bldgs. 1675-1679, 1682, 1685-87

Robins Air Force Base

1600 Area No. Davis Drive

Warner Robins, GA, Co: Houston 31098-

Federal Register Notice Date: 03/15/91

Property Number: 189010215-189010219

Status: Excess

Base Closure: No

Comment: 20110 sq. ft. each; 1 story concrete frame; possible asbestos; utilities disconnected; two right-of-way easements.

Bldg. 1680

Robins Air Force Base

1600 Area No. Davis Drive

Warner Robins, GA, Co: Houston 31098-

Federal Register Notice Date: 03/15/91

Property Number: 189010220

Status: Excess

Base Closure: No

Comment: 15875 sq. ft.; 1 story concrete; possible asbestos; utilities d'sconnected; two right-of-way easements.

Bldg. 1683

Robins Air Force Base

1600 Area No. Davis Drive

Warner Robins, GA, Co: Houston 31098-

Federal Register Notice Date: 03/15/91

Property Number: 189010222

Status: Excess

Base Closure: No

Comment: 20238 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements

Bldg. 1684

Robins Air Force Base

1600 Area No. Davis Drive

Warner Robins, GA, Co: Houston 31098-

Federal Register Notice Date: 03/15/91

Property Number: 189010223

Status: Excess

Base Closure: No

Comment: 5905 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements.

Illinois

Suitable Buildings (by Agency)

Air Force

Bldg. 1380

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010232

Status: Unutilized

Base Closure: No

Comment: 350 sq. ft.; one story wood frame; no utilities; structural deficiencies; used for training exercise (chemicals and explosives).

Bldg. 106

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010255

Status: Unutilized

Base Closure: No

Comment: 2360 sq. ft.; 1 story wood; possible asbestos; most recent use—jail.

Bldg. 123

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010256

Status: Unutilized

Base Closure: No

Comment: 1500 sq. ft.; 1 story wood; potential utilities.

Bldg. 125

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010257

Status: Unutilized

Base Closure: No

Comment: 16846 sq. ft.; 1 story wood frame; possible asbestos; no utilities.

Bldg. 383
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 03/15/91
Property Number: 189010258
Status: Unutilized
Base Closure: No
Comment: 1945 sq. ft.; 1 story masonry/glass
frame; most recent use-bank; friable
asbestos on ceiling tiles in two rooms.

Bldg. 1220
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 03/15/91
Property Number: 189010259
Status: Unutilized
Base Closure: No
Comment: 589 sq. ft.; 1 story concrete block;
water pump house for swimming pool;
potential utilities.

Bldg. 1221
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 03/15/91
Property Number: 189010260
Status: Unutilized
Base Closure: No
Comment: 2893 sq. ft.; 1 story concrete; bath
house for swimming pool limited utilities;
possible asbestos.

Massachusetts

Suitable Buildings (by Agency)

Air Force
Bldgs. 5610, 5621, and 5629
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010611-189010613
Status: Unutilized
Base Closure: No
Comment: 10423 sq. ft. each; wood/concrete
frame; 6-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5606, 5608, 5612, 5620, 5622, 5624, 5627,
5633, 5635, 5637, 5638, 5639
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010614-189010625
Status: Unutilized
Base Closure: No
Comment: 6949 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5605, 5609, 5625, 5636, 5640, 5642
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010626-189010631
Status: Unutilized
Base Closure: No
Comment: 5904 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5011, 5613, 5614, 5619, 5623, 5660, 5662,
5663
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010632-189010639
Status: Unutilized
Base Closure: No
Comment: 3474 sq. ft. each; wood/concrete
frame; 2-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5607, 5628, 5628, 5630-5632, 5661
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010640-189010646
Status: Unutilized
Base Closure: No
Comment: 2952 sq. ft. each; wood/concrete
frame; 2-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5804
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010647
Status: Unutilized
Base Closure: No
Comment: 8856 sq. ft. each; wood/concrete
frame; 6-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5634
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010648
Status: Unutilized
Base Closure: No
Comment: 8856 sq. ft. each; wood/concrete
frame; 6-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5568, 5570, 5572
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010649-189010651
Status: Unutilized
Base Closure: No
Comment: 7367 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5532, 5533, 5544, 5545, 5552, 5555, 5570,
5577, 5579, 5585, 5588
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010652-189010662
Status: Unutilized
Base Closure: No

Comment: 6204 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5536, 5538, 5557, 5558, 5566, 5583, 5593
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010663-189010669
Status: Unutilized
Base Closure: No
Comment: 7839 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5580
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010670
Status: Unutilized
Base Closure: No
Comment: 9216 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldg. 5527
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010671
Status: Unutilized
Base Closure: No
Comment: 7377 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldg. 5556
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010672
Status: Unutilized
Base Closure: No
Comment: 7366 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldg. 5574
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010673
Status: Unutilized
Base Closure: No
Comment: 7368 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Bldgs. 5468, 5525, 5528-5531, 5534, 5537, 5539-
5543, 5546-5548, 5550, 5551, 5553, 5554,
5559-5565, 5567, 5569, 5571, 5573, 5575, 5578,

5581 5582, 5584, 5586, 5587, 5589-5592,
5594-5599

Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542-5001
Federal Register Notice Date: 03/15/91
Property Number: 189010674-189010721
Status: Unutilized
Base Closure: No
Comment: 7324 sq. ft. each; wood/concrete
frame; 4-unit family housing; lacks
functional sewage disposal system;
possible asbestos; needs rehab; potential
utilities.

Michigan

Suitable Buildings (by Agency)

Air Force
Bldg. 5097
Wurtsmith AFB
Oscoda, MI, Co: Iosco 48753-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010342
Status: Excess
Base Closure: No
Comment: 186 sq. ft.; 1 story frame; most
recent use—generator building; limited
facilities.

Bldg. 20
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010775
Status: Excess
Base Closure: No
Comment: 13404 sq. ft.; 1 floor; concrete
block; potential utilities; possible asbestos;
most recent use—warehouse/supply
facility.

Bldg. 28
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010778
Status: Excess
Base Closure: No
Comment: 1000 sq. ft.; 1 floor; possible
asbestos; potential utilities; most recent
use—maintenance facility.

Missouri

Suitable Buildings (by Agency)

Air Force
Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis, MO, Co: St. Louis 63125-4118
Federal Register Notice Date: 03/15/91
Property Number: 189010081
Status: Underutilized
Base Closure: No
Comment: 20 acres; portion near flammable
materials; portion on archaeological site;
special fencing required.

Montana

Suitable Buildings (by Agency)

Air Force
Housing Area Facility #130
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030033

Status: Unutilized
Base Closure: No
Comment: 960 sq. ft.; 1 story concrete bldg;
possible asbestos; easement restrictions;
most recent use—automotive shop.

Housing Area Facility #5
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030034
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated 10/
31/90.

Housing Area Facility #6
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030035
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

Housing Area Facility #7
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030036
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

Housing Area Facility #8
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030037
Status: Excess
Base Closure: No
Comment: 1768 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

Housing Area Facility #9
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030038
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

Housing Area Facility #10
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030039
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military

training school; scheduled to be vacated
10/31/90.

Housing Area Facility #11
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030040
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

Housing Area Facility #12
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901-
Federal Register Notice Date: 03/15/91
Property Number: 189030041
Status: Excess
Base Closure: No
Comment: 1266 sq. ft.; 1 story concrete
building; possible asbestos; easement
restrictions; most recent use—military
training school; scheduled to be vacated
10/31/90.

New Mexico

Suitable Buildings (by Agency)

Air Force
Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland, NM, Co: Bernalillo 87117-5496
Federal Register Notice Date: 03/15/91
Property Number: 189010072
Status: Unutilized
Base Closure: No
Comment: 520 sq. ft., 1 story portable building,
off-site use only.

New York

Suitable Buildings (by Agency)

Navy
Naval Reserve Center
112 Hanse Avenue
Freeport, NY, Co: Nassau 11550-
Federal Register Notice Date: 03/15/91
Property Number: 779010041
Status: Excess
Base Closure: No
Comment: 40000 sq. ft.; 1 floor; most recent
use—offices; needs rehab.

Ohio

Suitable Buildings (by Agency)

Navy
Naval & Marine Corps Res. Ctr.
170 Ashland Road
Mansfield, OH, Co: Richland 44902-
Federal Register Notice Date: 03/15/91
Property Number: 779010075
Status: Excess
Base Closure: No
Comment: 2900 sq. ft.; 1 floor; most recent
use—offices; needs rehab.; Navy owns
bldg.—land leased from city; expires
September 1990.

Pennsylvania*Suitable Buildings (by Agency)***Navy****Marine Corp. Reserve Center**

RR 2, Box 569B

Newcastle, PA, Co: Lawrence 16101-

Federal Register Notice Date: 03/15/91**Property Number:** 779010024**Status:** Unutilized**Base Closure:** No**Comment:** 17000 sq. ft.; 1 floor; most recent use—offices; needs rehab.**South Dakota***Suitable Buildings (by Agency)***Air Force**

Bldgs. 8810B, 8614C, 8732D, 8816C, 8727C, 8548D, 8540B, 8546B, 8528D

Renel Heights

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.**Federal Register Notice Date:** 03/15/91**Property Numbers:** 189010343, 189010344,

189010346-348, 189010350, 189010351,

189010354, 189010355

Status: Unutilized**Base Closure:** No**Comment:** 852 sq. ft. each; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.**Bldg.** 8728D**Renel Heights**

264 Lee

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010345**Status:** Unutilized**Base Closure:** No**Comment:** 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.**Bldg.** 8513A**Renel Heights**

119 Brett

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010349**Status:** Unutilized**Base Closure:** No**Comment:** 1041 sq. ft.; 1 story concrete masonry block housing units; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.**Bldg.** 8719**Renel Heights**

235 Lee

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010352**Status:** Unutilized**Base Closure:** No**Comment:** 1077 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.**Bldg.** 8726B**Renel Heights**

252 Lee

Ellsworth AFB, SC, Co: Pennington 57706-

Location: Across from main gate turn off.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010353**Status:** Unutilized**Base Closure:** No**Comment:** 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.**Bldg.** 8425C**Skyway**

438 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010356**Status:** Unutilized**Base Closure:** No**Comment:** 481 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8421D**Skyway**

484 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010357**Status:** Unutilized**Base Closure:** No**Comment:** 482 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; possible asbestos.**Bldg.** 8406D**Skyway**

556 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010358**Status:** Unutilized**Base Closure:** No**Comment:** 921 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8438C**Skyway**

246 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010359**Status:** Unutilized**Base Closure:** No**Comments:** 480 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8421A**Skyway**

490 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010360**Status:** Unutilized**Base Closure:** No**Comment:** 481 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8433D**Skyway**

300 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010361**Status:** Unutilized**Base Closure:** No**Comment:** 481 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8412F**Skyway**

625 Arnold Lane

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010362**Status:** Unutilized**Base Closure:** No**Comment:** 482 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8440E**Skyway**

228 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91**Property Number:** 189010363**Status:** Unutilized**Base Closure:** No**Comment:** 557 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.**Bldg.** 8401C**Skyway**

98 Front St.

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Number:** 189010364**Status:** Unutilized**Base Closure:** No**Comment:** 916 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldgs. 8477B, 8452B, 8457E, 8448E, 8435E, 8438E, 8473B, 8475B, 8448E, 8457B, 8447A, 8468B, 8468C, 8418A

Skyway

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Between main gate turn off and school gate.**Federal Register Notice Date:** 03/15/91**Property Numbers:** 189010365, 189010367,

189010370, 189010376, 189010379, 189010380,

189010385, 189010772, 189030012, 189040005,

189040018, 189040020, 189040025, 189040026

Status: Unutilized**Base Closure:** No

Comment: 1114 sq. ft. each; 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8488E

Skyway

11 Front St.

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010366

Status: Unutilized

Base Closure: No

Comment: 968 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8425B

Skyway

440 Bill Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010368

Status: Unutilized

Base Closure: No

Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8412C

Skyway

619 Arnold Lane

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010369

Status: Unutilized

Base Closure: No

Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8414B

Skyway

618 Arnold Lane

Ellsworth, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010371

Status: Unutilized

Base Closure: No

Comment: 837 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8423B

Skyway

464 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010372

Status: Unutilized

Base Closure: No

Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8486A

Skyway

32 Front St.

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010373

Status: Unutilized

Base Closure: No

Comment: 1256 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldgs. 8448D, 8438D, 8479E, 8475D, 8475F, 8448C, 8454C, 8477D, 8437D, 8459D, 8447C, 8473C, 8415D, 8475C, 8475E

Skyway

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Numbers: 189010374, 189010384,

189010760, 189010762, 189010765, 189010766, 189010771, 189010774, 189030011, 189030014, 189030015, 189040009, 189040013, 189040021, 189040022

Status: Unutilized

Base Closure: No

Comment: 960 sq. ft. each; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8448A

Skyway

219 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010375

Status: Unutilized

Base Closure: No

Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8474C

Skyway

83 Front St.

Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91

Property Number: 189010377

Status: Unutilized

Base Closure: No

Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8412H

Skyway

629 Arnold Lane

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010378

Status: Unutilized

Base Closure: No

Comment: 897 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8413A

Skyway

632 Arnold Lane

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010381

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8486B

Skyway

30 Front St.

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010382

Status: Unutilized

Base Closure: No

Comment: 1256 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8471A

Skyway

579 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Between main gate turn off and school gate.

Federal Register Notice Date: 03/15/91

Property Number: 189010383

Status: Unutilized

Base Closure: No

Comment: 963 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.

Bldg. 8809A

Renel Heights

217 Barrentine Way

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010388

Status: Unutilized

Base Closure: No

Comment: 1277 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8814C

Renel Heights

244 Barrentine Way

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010387

Status: Unutilized

Base Closure: No

Comment: 1199 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8808A

Renel Heights

220 Barrentine Way

Ellsworth AFB, SD, Co: Pennington 57706-
Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010388

Status: Unutilized

Base Closure: No

Comment: 1277 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 9122B

Renel Heights

234 Franklin Avenue

Ellsworth AFB, SD, Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010389

Status: Unutilized

Base Closure: No

Comment: 1042 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldgs. 8614A, 8815A, 8532D, 8723A, 8623D,

8816A, 8534B, 8729A, 8724B

Renel Heights

Ellsworth AFB, SD, Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Numbers: 189010390, 189010391,

189010395, 189010399, 189010403, 189010409,

189010411, 189010412, 189010413

Status: Unutilized

Base Closure: No

Comment: 1052 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8724A

Renel Heights

242 Lee Drive

Ellsworth AFB, SD, Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010392

Status: Unutilized

Base Closure: No

Comment: 1199 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8590B

Renel Heights

424 Brett Road

Ellsworth AFB, SD, Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010393

Status: Unutilized

Base Closure: No

Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8501A

Renel Heights

101 Brett Road

Ellsworth AFB, SD, Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010394

Status: Unutilized

Base Closure: No

Comment: 1466 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8816D

Renel Heights

254 Barrentine Way

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010396

Status: Unutilized

Base Closure: No

Comment: 1099 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8590A

Renel Heights

422 Brett Road

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010397

Status: Unutilized

Base Closure: No

Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8932

Renel Heights

232 Polifka

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010398

Status: Unutilized

Base Closure: No

Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8546C

Renel Heights

260 Brett Road

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010400

Status: Unutilized

Base Closure: No

Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 9111B

Renel Heights

211 Frank

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010401

Status: Unutilized

Base Closure: No

Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 9119

Renel Heights

225 Frank

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010402

Status: Unutilized

Base Closure: No

Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8601B

Renel Heights

201 Clark Street

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010404

Status: Unutilized

Base Closure: No

Comment: 1404 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8507

Renel Heights

111 Brett Road

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010405

Status: Unutilized

Base Closure: No

Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldgs. 8566C, 8556B, 8817B, 8568B, 8531C,

8725A, 8537B, 8535C, 8534A, 8726A

Renel Heights

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Numbers: 189010406, 189010414,

189010417, 189010418, 189010419, 189010421,

189010422, 189010424, 189010426

Status: Unutilized

Base Closure: No

Comment: 852 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8930

Renel Heights

230 Polifka Drive

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010407

Status: Unutilized

Base Closure: No

Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8618

Renel Heights

240 Clark Street

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010408

Status: Unutilized

Base Closure: No

Comment: 1652 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8921A

Renel Heights

243 Polifka Avenue

Ellsworth AFB, SD Co: Pennington 57706—

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010410

Status: Unutilized

Base Closure: No

Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 9105

Renel Heights

205 Frank Street

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010415

Status: Unutilized

Base Closure: No

Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8566D

Renel Heights

338 Brett Road

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010416

Status: Unutilized

Base Closure: No

Comment: 1000 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8577A

Renel Heights

387 Brett Road

Ellsworth AFB, SD, Co: Pennington 57706-

Location: Across from main gate turn off.

Federal Register Notice Date: 03/15/91

Property Number: 189010420

Status: Unutilized

Base Closure: No

Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8433C, Skyway Housing

Ellsworth Air Force Base

302 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010763

Status: Unutilized

Base Closure: No

Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8440F, Skyway Housing

Ellsworth Air Force Base

226 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010764

Status: Unutilized

Base Closure: No

Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8454A, Skyway Housing

Ellsworth Air Force Base

299 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010767

Status: Unutilized

Base Closure: No

Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8474D, Skyway Housing

Ellsworth Air Force Base

82 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010768

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8481A, Skyway Housing

Ellsworth Air Force Base

52 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010769

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8451C, Skyway Housing

Ellsworth Air Force Base

275 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010770

Status: Unutilized

Base Closure: No

Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8478D, Skyway Housing

Ellsworth Air Force Base

61 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189010773

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475A

Skyway Housing, Ellsworth Air Force Base

81 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189030008

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8452A

Skyway Housing, Ellsworth Air Force Base

279 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189030009

Status: Unutilized

Base Closure: No

Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated;

possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472B

Skyway Housing, Ellsworth Air Force Base

96 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189030010

Status: Unutilized

Base Closure: No

Comment: 918 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8448B

Skyway Housing, Ellsworth Air Force Base

221 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189030012

Status: Unutilized

Base Closure: No

Comment: 1114 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472C

Skyway Housing, Ellsworth Air Force Base

94 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189030013

Status: Unutilized

Base Closure: No

Comment: 918 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8471B, Skyway Housing

Ellsworth Air Force Base

581 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189040003

Status: Unutilized

Base Closure: No

Comment: 837 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8457A, Skyway Housing

Ellsworth Air Force Base

401 Billy Mitchell

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189040004

Status: Unutilized

Base Closure: No

Comment: 1170 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8474B, Skyway Housing

Ellsworth Air Force Base

84 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-

Federal Register Notice Date: 03/15/91

Property Number: 189040006

Status: Unutilized

Base Closure: No

Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8482B; Skyway Housing
Ellsworth Air Force Base
43 Front Street
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040007
Status: Unutilized
Base Closure: No

Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8425D; Skyway Housing
Ellsworth Air Force Base
436 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040008
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8438F; Skyway Housing
Ellsworth Air Force Base
240 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040010
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8416B; Skyway Housing
Ellsworth Air Force Base
600 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040011
Status: Unutilized
Base Closure: No
Comment: 921 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8488A; Skyway Housing
Ellsworth Air Force Base
16 Front Street
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040012
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8450F; Skyway Housing
Ellsworth Air Force Base
249 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040014
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8488B; Skyway Housing
Ellsworth Air Force Base
14 Front Street

Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040015
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8487C; Skyway Housing
Ellsworth Air Force Base
18 Front Street
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040016
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8427E; Skyway Housing
Ellsworth Air Force Base
418 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040017
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8489A; Skyway Housing
Ellsworth Air Force Base
4 Front Street
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040019
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8466D; Skyway Housing
Ellsworth Air Force Base
509 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040023
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8442C; Skyway Housing
Ellsworth Air Force Base
220 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040024
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8468C; Skyway Housing
Ellsworth Air Force Base
533 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040025

Status: Unutilized
Base Closure: No
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8418A; Skyway Housing
Ellsworth Air Force Base
522 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706-
Federal Register Notice Date: 03/15/91
Property Number: 189040026
Status: Unutilized
Base Closure: No
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Texas

Suitable Buildings (by Agency)

Navy

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010161
Status: Underutilized
Base Closure: No
Comment: 1730 sq. ft.; 1 story residence.
Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010162
Status: Underutilized
Base Closure: No
Comment: 3352 sq. ft.; 1 story residence.
Bldgs. 2460, 2462, 2464, 2468, 2472, 2476, 2451, 2458, 2461, 2473, 2478, 2480, 2484, 2486-2488, 2494, 2500, 2502, 2506, 2508, 2525

Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010163-779010065, 779010168-779010170, 779010193-779010208
Status: Underutilized
Base Closure: No
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010166
Status: Underutilized
Base Closure: No
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010167
Status: Underutilized
Base Closure: No
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi

Property Number: 779010220
Status: Underutilized
Base Closure: No
Comment: 1576 sq ft.; 1 story residence.
Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010221
Status: Underutilized
Base Closure: No
Comment: 1576 sq ft.; 1 story residence.
Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010222
Status: Underutilized
Base Closure: No
Comment: 3528 sq ft.; 1 story residence.
Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010223
Status: Underutilized
Base Closure: No
Comment: 3528 sq ft.; 1 story residence.
Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010224
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.
Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010225
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.
Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010226
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.
Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419-
Federal Register Notice Date: 03/15/91
Property Number: 779010227
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Air Force
Bldg. 720
Carswell Air Force Base
301 Seymour
Forth Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91

Property-Number: 189030043
Status: Unutilized
Base Closure: No
Comment: 1612 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 723
Carswell Air Force Base
306 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030044
Status: Unutilized
Base Closure: No
Comment: 1612 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 716 A & B, 718 A & B, 770, 83, 861, 882
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 18903045-189030050
Status: Unutilized
Base Closure: No
Comment: 1684 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 804
Carswell Air Force Base
209 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030051
Status: Unutilized
Base Closure: No
Comment: 1435 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 887
Carswell Air Force Base
109 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030052
Status: Unutilized
Base Closure: No
Comment: 1435 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 884
Carswell Air Force Base
100 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030053
Status: Unutilized
Base Closure: No
Comment: 1622 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 888
Carswell Air Force Base
105 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030054
Status: Unutilized
Base Closure: No
Comment: 1407 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos

and termite infestation; inadequate sewage disposal system.

Bldg. 735
Carswell Air Force Base
216 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030055
Status: Unutilized
Base Closure: No
Comment: 1717 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 742 A & B, 761 A & B, 764, 766, 782, 784, 839, 846, 856 859, 870, 709 A & B
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030056, 189030057, 189030065-189030074
Status: Unutilized
Base Closure: No
Comment: 1870 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 741, A & B, 746 A & B, 811, 812, 843, 757, 762
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030058, 189030059, 189030060-189030064
Status: Unutilized
Base Closure: No
Comment: 1640 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 705, 713, 714, 739, 740, 750, 754, 758, 774, 775, 809, 810, 830, 842, 845, 851, 860, 869, 871, 872, 875, 876
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030075-189030096
Status: Unutilized
Base Closure: No
Comment: 2099 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 700-703, 719, 722, 725, 726, 728, 729, 733, 736, 800, 802, 803, 805, 806, 833, 863, 867, 873, 878, 886, 889
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030097-189030120
Status: Unutilized
Base Closure: No
Comment: 1387 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 704
Carswell Air Force Base
6105 Coleman
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Number: 189030121
Status: Unutilized
Base Closure: No
Comment: 1434 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos

and termite infestation; inadequate sewage disposal system.

Bldg. 715, 717, 769, 772, 808, 816, 820, 823, 826, 827, 829, 865, 881
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030122-189030134
Status: Unutilized
Base Closure: No
Comment: 1688 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldgs. 721, 724, 730, 737, 807, 835, 837
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030135-189030141
Status: Unutilized
Base Closure: No
Comment: 1622 sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 727A
Carswell Air Force Base
316 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030142
Status: Unutilized
Base Closure: No
Comment: 2099 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 727B
Carswell Air Force Base
318 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030143
Status: Unutilized
Base Closure: No
Comment: 2099 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 731
Carswell Air Force Base
224 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030144
Status: Unutilized
Base Closure: No
Comment: 1434 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 734
Carswell Air Force Base
6099 Lyles
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030145
Status: Unutilized
Base Closure: No
Comment: 1612 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 732

Carswell Air Force Base
221 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030146
Status: Unutilized
Base Closure: No
Comment: 1612 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldg. 745
Carswell Air Force Base
6132-6134 Pollard
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030147
Status: Unutilized
Base Closure: No
Comment: 2138 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldgs. 768, 765, 763, 760, 751, 711, 710, 708, 707,
743, 744, 749, 838, 840, 813, 848, 849, 819, 850,
852, 853, 854, 855, 825, 857, 858, 851, 879, 780,
779, 773, 778, 777, 776, 783, 781

Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Numbers: 189030148-189030183
Status: Unutilized
Base Closure: No
Comment: 1624 sq. ft. each; 1 story wood
frame; structurally deteriorated; possible
asbestos and termite infestation;
inadequate sewage disposal system.

Bldg. 801
Carswell Air Force Base
6099 Straley
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030184
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldg. 834
Carswell Air Force Base
117 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030185
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldg. 836
Carswell Air Force Base
120 Seymour
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030186
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldg. 828
Carswell Air Force Base

6185-6187 Straley
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Number: 189030187
Status: Unutilized
Base Closure: No
Comment: 2099 sq. ft.; 1 story wood frame;
structurally deteriorated; possible asbestos
and termite infestation; inadequate sewage
disposal system.

Bldgs. 832, 862, 868, 883
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Numbers: 189030188-189030191
Status: Unutilized
Base Closure: No
Comment: 1434 sq. ft. each; 1 story wood
frame; structurally deteriorated; possible
asbestos and termite infestation;
inadequate sewage disposal system.

Bldgs. 706, 712, 738, 747, 748, 752, 753, 755, 756,
759, 767, 771, 814, 815, 817, 818, 821, 822, 841,
844, 847, 864, 866, 874, 877, 880

Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114-
Federal Register Notice Date: 03/15/91
Property Numbers: 189030192-189030218
Status: Unutilized
Base Closure: No
Comment: 2148 sq. ft. each; 1 story wood
frame; structurally deteriorated; possible
asbestos and termite infestation;
inadequate sewage disposal system.

Bldg. 439
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843-5000
Location: Six miles on Highway 90 east of Del
Rio, Texas.

Federal Register Notice Date: 03/15/91
Property Number: 189030177
Status: Unutilized
Base Closure: No
Comment: 10500 sq. ft.; wood frame; 2 floors;
possible asbestos; needs rehab.

Bldg. 442
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843-5000
Location: Six miles on Highway 90 east of Del
Rio, Texas.

Federal Register Notice Date: 03/15/91
Property Number: 189010178
Status: Unutilized
Base Closure: No
Comment: 15557 sq. ft.; wood frame; needs
rehab; possible asbestos.

Bldg. 467
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843-5000
Location: Six miles on Highway 90 east of Del
Rio, Texas.

Federal Register Notice Date: 03/15/91
Property Number: 189010179
Status: Underutilized
Base Closure: No
Comment: 10500 sq. ft.; wood frame; needs
rehab; seasonal use by scouts and CAP.

Bldg. 89
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843-5000
Location: Six miles on Highway 90 east of Del
Rio, Texas.

Federal Register Notice Date: 03/15/91
Property Number: 189010180
Status: Underutilized

Base Closure: No
Comment: 4122 sq. ft.; 1 floor; wood frame;
needs rehab; portion temporarily used for
storage.

Bldg. 660
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843-5000
Location: Six miles on Highway 90 east of Del
Rio, Texas.

Federal Register Notice Date: 03/15/91
Property Number: 189010172
Status: Unutilized
Base Closure: No
Comment: 957 sq. ft.; 1 floor; concrete block
frame; needs rehab.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 248 |
| Suitable..... | 248 |
| Suitable buildings..... | 248 |
| Suitable land..... | 0 |
| Unsuitable..... | 0 |
| Unsuitable buildings..... | 0 |
| Unsuitable land..... | 0 |
| Number of resubmission..... | 0 |

Virginia

Suitable Land (by Agency)

Navy

Naval Base
Norfolk, VA, Co: Norfolk 23508-
Location: Northeast corner of base, near
Willoughby housing area.
Federal Register Notice Date: 03/15/91
Property Number: 779010156
Status: Unutilized
Base Closure: No
Comment: 60 acres; most recent use—sandpit;
secured area with alternate access.

West Virginia

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling, WV, Co: Ohio 26003-
Federal Register Notice Date: 03/15/91
Property Number: 779010077
Status: Excess
Base Closure: No
Comment: 32000 sq. ft.; 1 floor; most recent
use—offices; 15% of total space occupied;
needs rehab; land leased from city—
expires September 1990.

Universe of Properties:

| | |
|------------------------------|---|
| Total..... | 1 |
| Suitable..... | 1 |
| Suitable buildings..... | 1 |
| Suitable land..... | 0 |
| Unsuitable..... | 0 |
| Unsuitable buildings..... | 0 |
| Unsuitable land..... | 0 |
| Number of resubmissions..... | 0 |

REPORT SUMMARY FOR ALL STATES

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 542 |
| Suitable..... | 542 |
| Suitable buildings..... | 533 |
| Suitable land..... | 9 |
| Unsuitable..... | 0 |
| Unsuitable buildings..... | 0 |
| Unsuitable land..... | 0 |
| Number of resubmission..... | 0 |

UNSUITABLE PROPERTIES

Alaska

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1025

Ft. Yukon Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010318

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Unsuitable Land (by Agency)

Campion Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010430

Status: Unutilized

Base Closure: No

Reason: Other; isolated area; not accessible by road.

Comment: Isolated and remote area; Arctic environment.

Lake Louise Recreation

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010431

Status: Unutilized

Base Closure: No

Reason: Other; isolated area; not accessible by road.

Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010432

Status: Unutilized

Base Closure: No

Reason: Other; isolated area; not accessible by road.

Comment: Isolated and remote area; Arctic coast.

Unsuitable Buildings (by Agency)

Bldg. 203

Tin City Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010296

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 113

Tin City Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010297

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 165

Sparrevohn Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010298

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 150

Sparrevohn Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010299

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 130

Sparrevohn Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010300

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 306

King Salmon Airport

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010301

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 1401

Galena Airport

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010302

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldgs. 11-230, 21-116, 34-616, 43-010, 63-320, 63-325

Elmendorf Air Force Base

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010303-189010308

Status: Unutilized

Base Closure: No

Reason: Secured area; contamination.

Bldgs. 103, 110, 112-115, 118, 1001, 1018, 1055

Ft. Yukon Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Numbers: 189010309-189010319

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldgs. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056

Cape Lisburne Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Numbers: 189010320-189010329

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldgs. 103-105, 110, 114, 202, 204, 205, 1001, 1015

Kotzebue Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Numbers: 189010330-189010339

Status: Unutilized

Base Closure: No

Reason: Secured area; isolated area; not accessible by road; contamination.

Bldg. 50

Cold Bay Air Force Station

21 CSG/DEER

Elmendorf AFB, AK, Co: Anchorage 99506-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010433

Status: Unutilized

Base Closure: No

Reason: Other; isolated area; not accessible by road.

Comment: Isolated and remote; Arctic environment.

Universe of Properties:

| | |
|-----------------------------|----|
| Total..... | 48 |
| Suitable..... | 0 |
| Suitable buildings..... | 0 |
| Suitable land..... | 0 |
| Unsuitable..... | 48 |
| Unsuitable buildings..... | 45 |
| Unsuitable land..... | 3 |
| Number of resubmission..... | 0 |

Alabama

Unsuitable buildings (by Agency)

Air Force

Bldg. 913

Maxwell AFB

Avenue "C"

Montgomery, AL, Co: Montgomery 36112-

Federal Register Notice Date: 03/15/91

Property Number: 189010002

Status: Unutilized

Base Closure: No

Reason: Secured area.

Bldg. 927

Maxwell AFB

Montgomery, AL, Co: Montgomery 36112-

Location: Off Avenue "C"

Federal Register Notice Date: 03/15/91

Property Number: 189010003

Status: Unutilized

Base Closure: No

Reason: Secured area.

Bldg. 935
Maxwell AFB
Montgomery, AL, Co: Montgomery 36112-
Location: Off Selfridge Street
Federal Register Notice Date: 03/15/91
Property Number: 189010004
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 936
Maxwell AFB
Selfridge Street
Montgomery, AL, Co: Montgomery 36112-
Federal Register Notice Date: 03/15/91
Property Number: 189010005
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 809
Gunter AFB
Montgomery, AL, Co: Montgomery 36114-
Location: Off Renfro Street
Federal Register Notice Date: 03/15/91
Property Number: 189010011
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 861
Gunter AFB
South Drive
Montgomery, AL, Co: Montgomery 36114-
Federal Register Notice Date: 03/15/91
Property Number: 189010012
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1011
Gunter AFB
Avenue "A"
Montgomery, AL, Co: Montgomery 36114-
Federal Register Notice Date: 03/15/91
Property Number: 189010013
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1022
Gunter AFB
Montgomery, AL, Co: Montgomery 36114-
Location: Adjacent to Avenue "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010015
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1042
Gunter AFB
Montgomery, AL, Co: Montgomery 36114-
Location: Between "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010016
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1052
Gunter AFB
Montgomery, AL, Co: Montgomery 36114-
Location: Between Avenues "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010019
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1060
Gunter AFB

4th Street at Avenue C
Montgomery, AL, Co: Montgomery 36114-
Federal Register Notice Date: 03/15/91
Property Number: 189010020
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1061
Gunter AFB
Avenue C
Montgomery, AL, Co: Montgomery 36114-
Federal Register Notice Date: 03/15/91
Property Number: 189010022
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1435
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112-
Federal Register Notice Date: 03/15/91
Property Number: 189030220
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1436
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112-
Federal Register Notice Date: 03/15/91
Property Number: 189030221
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1440
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112-
Federal Register Notice Date: 03/15/91
Property Number: 189030222
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1441
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112-
Federal Register Notice Date: 03/15/91
Property Number: 189030223
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 830
Gunter Air Force Base
Ramp Road
Montgomery, AL, Co: Montgomery 36114-
5000
Federal Register Notice Date: 03/15/91
Property Number: 189040853
Status: Underutilized
Base Closure: No
Reason: secured area.

Bldg. 421
Gunter Air Force Base
Avenue D
Montgomery, AL, Co: Montgomery 36114-5000
Federal Register Notice Date: 03/15/91
Property Number: 189040854
Status: Underutilized
Base Closure: No
Reason: secured area.

Bldg. 426
Gunter Air Force Base
Montgomery, AL, Co: Montgomery 36114-
5000

Federal Register Notice Date: 03/15/91

Property-Number 189040855
Status: Underutilized
Base Closure: No
Reason: secured area.
Universe of Properties:
Total.....19
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....67
Unsuitable buildings.....64
Unsuitable land.....3
Number of resubmission.....0

Arizona

Unsuitable Buildings (by Agency)

Air Force
Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB, AZ, Co: Maricopa 85240-5000
Federal Register Notice Date: 03/15/91
Property-Number: 189040856
Status: Unutilized
Base Closure: No
Reason: Secured area.

California

Unsuitable Land (by Agency)

Navy
Salton Sea Test Range
El Centro, CA, Co: Imperial 93555-
Federal Register Notice Date: 03/15/91
Property-Number: 779010068
Status: Excess
Base Closure: No
Reason: Secured area.

Unsuitable Buildings (by Agency)

Air Force
Bldg. 100
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010233
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 101
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010234
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 116
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010235
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 202
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-
Federal Register Notice Date: 03/15/91
Property Number: 189010236
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Navy

Bldg. 105
Naval FPS, CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010159
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 165
Naval FPS, CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010160
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010268
Status: Unutilized
Base Closure: No
Reason: Other.
Comment: sewer treatment facility.

Air Force

Bldg. 4052
March AFB
Ice House in West March
Riverside, CA, Co: Riverside 92518-
Federal Register Notice Date: 03/15/91
Property Number: 189010082
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone.

Unsuitable Land (by Agency)

Mather Air Force Base
SE corner of Mather
Sacramento, CA, Co: Sacramento 95655-
Federal Register Notice Date: 03/15/91
Property Number: 189010609
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Unsuitable Buildings (by Agency)

Bldg. 3686
Mather Air Force Base
Francis and E Streets
Sacramento, CA, Co: Sacramento 95655-
Federal Register Notice Date: 03/15/91
Property Number: 189010606
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Bldg. 3494
Mather Air Force Base
Driscoll and F. Streets
Sacramento, CA, Co: Sacramento 95655-
Federal Register Notice Date: 03/15/91
Property Number: 189010607
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Bldg. 2566
Mather Air Force Base
5th and B Streets
Sacramento, CA, Co: Sacramento 95655-
Federal Register Notice Date: 03/15/91
Property Number: 189010608

Status: Unutilized
Base Closure: Yes
Reason: Secured area.
Bldg. 1766
Mather Air Force Base
Gilbert St. & A Avenue
(See County). CA, Co: Sacramento 95655-
Federal Register Notice Date: 03/15/91
Property Number: 189030001

Status: Unutilized
Base Closure: No
Reason: Secured area.
Bldg. 707 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409-5045
Federal Register Notice Date: 03/15/91
Property Number: 189010193
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409-5045
Federal Register Notice Date: 03/15/91
Property Number: 189010195
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Lorton, CA, Co: San Bernadino 92409-5045
Federal Register Notice Date: 03/15/91
Property Number: 189010196
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409-5045
Federal Register Notice Date: 03/15/91
Property Number: 189010197
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010546
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010547
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base

Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437-

Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010548
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010549
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldgs. 1001-1010, 1015, 1022-1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010550-189010563
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 8008
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010564
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 8009
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010565
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 8010
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010566
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1100
Vandenberg Air Force Base
Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010567

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1101

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010568

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1103

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010569

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1104

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010570

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1104

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010571

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1105

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010572

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1106

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010573

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1107

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010574

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 13423

Vandenberg Air Force Base

K Street off Kansas

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010575

Status: Unutilized

Base Closure: No

Reason: Secured area.

Bldg. 13424

Vandenberg Air Force Base

K Street off Kansas

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010576

Status: Unutilized

Base Closure: No

Reason: Secured area.

Bldg. 13511

Vandenberg Air Force Base

K Street off Kansas

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010577

Status: Unutilized

Base Closure: No

Reason: Secured area.

Bldg. 13512

Vandenberg Air Force Base

K Street off Kansas

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010578

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1110

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010579

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 1108

Vandenberg Air Force Base

Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara
93437-

Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.

Federal Register Notice Date: 03/15/91

Property Number: 189010580

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 392 1182 60 ABG/DE

Travis Air Force Base

Hospital Drive

Travis AFB, CA, Co: Solano 94535-5496

Federal Register Notice Date: 03/15/91

Property Number: 189010187

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 1182 60 ABG/DE

Travis Air Force Base

Perimeter Road

Travis AFB, CA, Co: Solano 94535-5496

Federal Register Notice Date: 03/15/91

Property Number: 189010188

Status: Unutilized

Base Closure: No

Reason: Within airport runway clear zone;
secured area.

Bldg. 152 60 ABG/DE

Travis Air Force Base

Broadway Street

Travis AFB, CA, Co: Solano 94535-5496

Federal Register Notice Date: 03/15/91

Property Number: 189010190

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 159 60 ABG/DE

Travis Air Force Base

Broadway Street

Travis AFB, CA, Co: Solano 94535-5496

Federal Register Notice Date: 03/15/91

Property Number: 189010191

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; secured area.

Bldg. 384 60 ABG/DE

Travis Air Force Base

Hospital Drive

Travis AFB, CA, Co: Solano 94535-5496

Federal Register Notice Date: 03/15/91

Property Number: 189010192

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material; secured area.

Universe of Properties:

Total.....58
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....126
Unsuitable buildings.....121
Unsuitable land.....5
Number of resubmission.....0

Colorado

Unsuitable Buildings (by Agency)

Air Force

Bldg. 24

Buckley Air Nat'l Guard Base

Aurora, CO, Co: Arapahoe 80011-9599

Location: Demolished 7 Dec. 90.

Federal Register Notice Date: 03/15/91

Property Number: 189010249

Status: Unutilized

Base Closure: No

Reason: Secured area

Bldg. 291

Lowry Air Force Base

Denver, CO, Co: Denver 80230-5000

Location: South of 6th Avenue and east of Rosemary Court.

Federal Register Notice Date: 03/15/91

Property Number: 189010250

Status: Excess

Base Closure: No

Reason: Secured area.

Universe of Properties:

Total.....2
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....128
Unsuitable buildings.....123
Unsuitable land.....5
Number of resubmission.....0

Delaware

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1310

Dover Air Force Base

436 ABG/DE

Dover AFB, DE, Co: Kent 19902-

Federal Register Notice Date: 03/15/91

Property Number: 189010727

Status: Unutilized

Base Closure: No

Reason: Secured area.

Florida

Unsuitable Land (by Agency)

Air Force

Land

MacDill Air Force Base

6601 S. Manhattan Avenue

Tampa, FL, Co: Hillsborough 33608-

Federal Register Notice Date: 03/15/91

Property Number: 189030003

Status: Excess

Base Closure: No

Reason: Floodway.

Navy

Boca Chica Field

Naval Air Station

Key West, FL, Co: Monroe 23040-

Federal Register Notice Date: 03/15/91

Property Number: 7790100097

Status: Unutilized

Base Closure: No

Reason: Floodway.

East Martello Battery #2

Naval Air Station

Key West, FL, Co: Monroe 33040-

Federal Register Notice Date: 03/15/91

Property Number: 7790100099

Status: Excess

Base Closure: No

Reason: Within airport runway clear zone.

East Martello Battery #2

Naval Air Station

Key West, FL, Co: Monroe 23040-

Federal Register Notice Date: 03/15/91

Property Number: 779010275

Status: Excess

Base Closure: No

Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

East Martello Bunker #1

Naval Air Station

Key West, FL, Co: Monroe 33040-

Federal Register Notice Date: 03/15/91

Property Number: 779010101

Status: Excess

Base Closure: No

Reason: Within airport runway clear zone.

Unsuitable Land (by Agency)

Air Force

Eglin AFB

W 1/2 of SW 1/4, Sect. 31, T1S, R27W

Holly, FL, Co: Santa Rosa 32566-

Location: 3 1/2 miles NW of Holley, Florida on No. shore of East.

Federal Register Notice Date: 03/15/91

Property Number: 189010131

Status: Excess

Base Closure: No

Reason: Floodway.

Eglin AFB

W 1/2 of NW of Sect. 38, T1S, R27W

Holly, FL, Co: Santa Rosa 32566-

Federal Register Notice Date: 03/15/91

Property Number: 189010132

Status: Excess

Base Closure: No

Reason: Within airport runway clear zone.

Universe of Properties

Total.....7
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....136
Unsuitable buildings.....125
Unsuitable land.....11
Number of resubmission.....0

Georgia

Unsuitable Land (by Agency)

Navy

Naval Submarine Base

Grid G-5 to G-10 to Q-6 to P-2

Kings Bay, GA, Co: Camden 31547-

Federal Register Notice Date: 03/15/91

Property Number: 779010228

Status: Underutilized

Base Closure: No

Reason: Secured area.

Unsuitable Buildings (by Agency)

Naval Submarine Base-Kings Bay

1011 USS Daniel Boone Avenue

Kings Bay, GA, Co: Camden 31547-

Federal Register Notice Date: 03/15/91

Property Number: 779010107

Status: Unutilized

Base Closure: No

Reason: Secured area.

Universe of Properties:

Total.....2
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....138
Unsuitable buildings.....126
Unsuitable land.....12
Number of resubmission.....0

Idaho

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1012

Mountain Home Air Force Base

7th Avenue

(See County), ID, Co: Elmore 83648-

Federal Register Notice Date: 03/15/91

Property Number: 189030004

Status: Excess

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923

Mountain Home Air Force Base

7th Avenue

(See County), ID, Co: Elmore 83648-

Federal Register Notice Date: 03/15/91

Property Number: 189030005

Status: Excess

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604

Mountain Home Air Force Base

Pine Street

(See County), ID, Co: Elmore 83648-

Federal Register Notice Date: 03/15/91

Property Number: 189030006

Status: Excess

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229

Mt. Home Air Force Base

1st Avenue and A Street

Mt. Home AFB, ID, Co: Elmore 83648-

Federal Register Notice Date: 03/15/91

Property Number: 189040857

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material, within airport runway clear zone.

Universe of Properties:

Total.....4
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....142
Unsuitable buildings.....130
Unsuitable land.....12
Number of resubmission.....0

Illinois*Unsuitable Buildings (by Agency)***Air Force**

Bldg. 550

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010227

Status: Unutilized

Base Closure: No

Reason: Other environmental.

Comment: Water treatment sewage building.

Bldg. 551

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010228

Status: Unutilized

Base Closure: No

Reason: Other environmental.

Comment: Waste treatment plant.

Bldg. 552

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010229

Status: Unutilized

Base Closure: No

Reason: Other environmental.

Comment: Waste treatment plant.

Bldg. 556

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010230

Status: Unutilized

Base Closure: No

Reason: Other environmental.

Comment: Sewage treatment building with pumps.

Bldg. 964

Chanute Air Force Base

Rantoul, IL, Co: Champaign 61868-

Federal Register Notice Date: 03/15/91

Property Number: 189010231

Status: Unutilized

Base Closure: No

Reason: Other environmental

Comment: Waste treatment pump station.

Navy

Bldg. 928

Naval Training Center

Great Lakes

Great Lakes, IL, Co: Lake 60088-

Federal Register Notice Date: 03/15/91

Property Number: 779010120

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 28

Naval Training Center

Great Lakes

Great Lakes, IL, Co: Lake 60088-

Federal Register Notice Date: 03/15/91

Property Number: 779010123

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 25

Naval Training Center

Great Lakes

Great Lakes, IL, Co: Lake 60088-

Federal Register Notice Date: 03/15/91

Property Number: 779010126

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 2

Naval Training Center

Great Lakes

Great Lakes, IL, Co: Lake 60088-

Federal Register Notice Date: 03/15/91

Property Number: 779010128

Status: Underutilized

Base Closure: No

Reason: Secured Area.

Air Force

Bldg. 3191

Scott Air Force Base

East Drive 375 ABG/DE-5001

Scott AFB, IL, Co: St. Clair 62225-

Federal Register Notice Date: 03/15/91

Property Number: 189010247

Status: Unutilized

Base Closure: No

Reason: Within airport runway clear zone Secured Area.

Bldg. 3760

Scott Air Force Base

East Drive 375 ABG/DE

Scott AFB, IL, Co: St. Clair 62225-5001

Federal Register Notice Date: 03/15/91

Property Number: 189010248

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 503

Scott Air Force Base

Scott AFB, IL, Co: St. Clair 62225-

Federal Register Notice Date: 03/15/91

Property Number: 189010725

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 12 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 154 |
| Unsuitable Buildings..... | 142 |
| Unsuitable Land..... | 12 |
| Number of Resubmission..... | 0 |

Indiana*Unsuitable Buildings (by Agency)***Air Force**

Bldg. 748

Grisson Air Force Base

East Loop Road

Grisson, IN, Co: Miami 46961-

Federal Register Notice Date: 03/15/91

Property Number: 189010182

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 520

Grisson Air Force Base

Lancer Road and Matador Street

Grisson, IN, Co: Miami 46971-

Federal Register Notice Date: 03/15/91

Property Number: 189010183

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 309

Grisson Air Force Base

Mustang and Constellation Streets

Grisson, IN, Co: Miami 46971-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010184

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldg. 301

Grisson Air Force Base

Lightning and Constellation Streets

Grisson, IN, Co: Miami 46971-5000

Federal Register Notice Date: 03/15/91

Property Number: 189010186

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Universe of Properties:

| | |
|-----------------------------|------|
| Total..... | 4 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 1580 |
| Unsuitable Buildings..... | 146 |
| Unsuitable Land..... | 12 |
| Number of Resubmission..... | 0 |

Massachusetts*Unsuitable Buildings (by Agency)***Air Force**

Bldg. 1900

Westover Air Force Base

Chicopee, MA, Co: Hampden 01022-

Federal Register Notice Date: 03/15/91

Property Number: 189010438

Status: Unutilized

Base Closure: No

Reason: Secured Area

Bldg. 1604

Westover Air Force Base

Chicopee, MA, Co: Hampden 01022-5000

Federal Register Notice Date: 03/15/91

Property Number: 189040001

Status: Unutilized

Base Closure: No

Reason: Secured Area

Bldg. 1833

Westover Air Force Base

Chicopee, MA, Co: Hampden 01022-5000

Federal Register Notice Date: 03/15/91

Property Number: 189040002

Status: Unutilized

Base Closure: No

Reason: Secured Area

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 4 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 161 |
| Unsuitable Buildings..... | 149 |
| Unsuitable Land..... | 12 |
| Number of Resubmission..... | 0 |

Maryland*Unsuitable Land (by Agency)***Air Force****Land**

Brandywine Storage Annex

1776 ABW/DE Brandywine Road, Route 381

Andrews AFB, MD, Co: Prince Georges
20613-
Federal Register Notice Date: 03/15/91
Property-Number: 189010263
Status: Unutilized
Base Closure: No
Reason: Secured Area

Unsuitable Buildings (by Agency)

Bldg. 4
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges
20613-
Federal Register Notice Date: 03/15/91
Property-Number: 189010261
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges
20613-
Federal Register Notice Date: 03/15/91
Property-Number: 189010264
Status: Unutilized
Base Closure: No
Reason: Secured Area

Universe of Properties

Total.....3
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....164
Unsuitable Buildings.....151
Unsuitable Land.....13
Number of Resubmission.....0

Maine

Unsuitable Buildings (by Agency)

Air Force
Bldg. 5200
Loring Air Force Base
New York Place
Limestone, ME, Co: Aroostook 04750-
Federal Register Notice Date: 03/15/91
Property-Number: 189010541
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 6200
Loring Air Force Base
Georgia Road
Limestone, ME, Co: Aroostook 04750-
Federal Register Notice Date: 03/15/91
Property-Number: 189010542
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 6100
Loring Air Force Base
Limestone, ME Co: Aroostook 04750-
Location: Base industrial area
Federal Register Notice Date: 03/15/91
Property-Number: 189010543
Status: Unutilized
Base Closure: No
Reason: Secured Area

Universe of Properties

Total.....3
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0

Unsuitable.....167
Unsuitable Buildings.....154
Unsuitable Land.....13
Number of Resubmission.....0

Michigan

Unsuitable Buildings (by Agency)

Air Force
Bldg. 71
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010810
Status: Excess
Base Closure: No
Reason: Other
Comment: Sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010831
Status: Excess
Base Closure: No
Reason: Other
Comment: Water well

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010832
Status: Excess
Base Closure: No
Reason: Other
Comment: Water well

Bldg. 118
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property-Number: 189010875
Status: Excess
Base Closure: No
Reason: Other
Comment: Gasoline Station.

Bldg. 120
Calumet Air Force Station I25Calumet, MI,
Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010876
Status: Excess
Base Closure: No
Reason: Other
Comment: Gas Station.

Bldg. 166
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010877
Status: Excess
Base Closure: No
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010878
Status: Excess
Base Closure: No
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station

Calumet, MI Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010889
Status: Excess
Base Closure: No
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913-
Federal Register Notice Date: 03/15/91
Property Number: 189010890
Status: Excess
Base Closure: No
Reason: Other
Comment: Water pump station.

Bldgs. 560, 5658, 580, 856, 1005, 1012, 1041,
1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge, MI Co: Macomb 48045-
Location: North end of airfield.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010522-189010533
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total.....21
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....188
Unsuitable Buildings.....175
Unsuitable Land.....13
Number of Resubmission.....0

Minnesota

Unsuitable Buildings (by Agency)

Air Force
Bldg. 616
Minnesota Air Nat'l Guard
HQ 133rd Tactical Airlift Wing (MAC)
Minneapolis, MN Co: Hennepin 55111-
Federal Register Notice Date: 03/15/91
Property Number: 189010087
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 622
Minnesota Air Nat'l Guard
HQ 133rd Tactical Airlift Wing (MAC)
Minneapolis, MN Co: Hennepin 55111-
Federal Register Notice Date: 03/15/91
Property Number: 189010089
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 46
NAVAIRESCEN
6201 32nd Avenue South
Minneapolis, MN Co: Hennepin 55450-
Federal Register Notice Date: 03/15/91
Property Number: 189010085
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Universe of Properties:

Total.....3
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0

Unsuitable191
 Unsuitable Buildings178
 Unsuitable Land13
 Number of Resubmission0

Missouri

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 42, 45-47, 61
 Jefferson Barracks ANG Base
 1 Grant Road, Missouri National Guard
 St. Louis, MO, Co: St. Louis 63125-
Federal Register Notice Date: 03/15/91
 Property Numbers: 189010726, 189010728-
 189010731

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Universe of Properties:

Total5
 Suitable0
 Suitable Buildings0
 Suitable Land0
 Unsuitable196
 Unsuitable Buildings183
 Unsuitable Land13
 Number of Resubmission0

Montana

Unsuitable Buildings (by Agency)

Air Force

Bldg. 140
 Malmstrom AFB
 Between Goddard Avenue & 2nd Street
 Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010076
 Status: Unutilized
 Base Closure: No
 Reason: Within 2000 ft. of flammable or
 explosive material; Within airport runway
 clear zone; Secured Area; Other
 environmental.

Bldg. 280

Malmstrom AFB
 Flightline & Avenue G
 Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010077
 Status: Underutilized
 Base Closure: No
 Reason: Within 2000 ft. of flammable or
 explosive material; Within airport runway
 clear zone; Secured Area; Other
 environmental.

Bldg. 621

Malmstrom AFB
 1st Street & Avenue I
 Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010078
 Status: Unutilized
 Base Closure: No
 Reason: Other environmental; Secured Area
 Comment: Friable asbestos.

Bldg. 1500

Malmstrom AFB
 Perimeter Road
 Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010079
 Status: Unutilized
 Base Closure: No

Reason: Within 2000 ft. of flammable or
 explosive material; Secured Area; Other
 Environmental.

Bldg. 1502

Malmstrom AFB
 Perimeter Road
 Malmstrom, MT Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010080
 Status: Unutilized
 Base Closure: No
 Reason: Within 2000 ft. of flammable or
 explosive material; Secured Area; Other
 environmental.

Bldg. 627

Malmstrom Air Force Base
 2nd St. and I Avenue
 Great Falls, MT Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010722
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldg. 677

Malmstrom Air Force Base
 Avenue F between Goddard and 1st Avenue
 Great Falls, MT Co: Cascade 59402-
Federal Register Notice Date: 03/15/91
 Property Number: 189010723
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldg. 1991

Malmstrom Air Force Base
 Between Avenue G and H
 Malmstrom, MT Co: Cascade 59405-
Federal Register Notice Date: 03/15/91
 Property Number: 189040057
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Universe of Properties:

Total8
 Suitable0
 Suitable Buildings0
 Suitable Land0
 Unsuitable204
 Unsuitable Buildings191
 Unsuitable Land13
 Number of Resubmission0

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 167
 Pope Air Force Base
 317 CSG/DE Reilly Road
 Pope AFB, NC Co: Cumberland 28308-5045
Federal Register Notice Date: 03/15/91
 Property Number: 189010262
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

North Dakota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 422
 Minot Air Force Base
 Minot, ND Co: Ward 58705-
Federal Register Notice Date: 03/15/91
 Property Number: 189010724
 Status: Underutilized
 Base Closure: No

Reason: Secured Area.

New Hampshire

Unsuitable Land (by Agency)

Air Force

Golf Course

Pease Air Force Base
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Number: 189040360
 Status: Excess
 Base Closure: Yes
 Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

Bldg. 8

Pease Air Force Base
 Newington Road
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Number: 189010534
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldg. 94

Pease Air Force Base, Temp. Lodging Facility
 Rockingham Drive
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Number: 189010535
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldg. 132

Pease Air Force Base, Vehicle Fuel Station
 Exeter Street
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Number: 189010536
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldgs. 317, 343

Pease Air Force Base, Jet Fuel Pumphouse
 On the flightline
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Numbers: 189010537, 189010538
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldg. 439

Pease Air Force Base
 Weapons Storage Area.
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Number: 189010539
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.

Bldgs. 369-371, 373-375, 377-380, 382

Family Housing
 Pease Air Force Base
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91
 Property Numbers: 189040336-189040346
 Status: Excess
 Base Closure: Yes
 Reason: Within airport runway clear zone.

Bldg. 33

Pease Air Force Base
 Pease AFB, NH, Co: Rockingham 03803-
Federal Register Notice Date: 03/15/91

Property Number: 189040348

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Service Station.

Bldgs. 398-401, 403, 405, 407

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040353-189040359

Status: Excess

Base Closure: Yes

Reason: Within airport runway clear zone.

Bldgs. 105, 113, 117, 119-122, 136, 180, 224, 226, 235, 1069

Industrial Facilities

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040361-189040373

Status: Excess

Base Closure: Yes

Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 112, 205-207, 211, 217, 220, 237, 238

Aircraft Operations

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040374-189040382

Status: Excess

Base Closure: Yes

Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 63, 123, 124, 361

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040716-189040719

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Utility plants.

Bldgs. 232, 233, 239, 416

Communications Facilities

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040722-189040725

Status: Excess

Base Closure: Yes

Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 212-215, 222, 227, 229

Aircraft Operations

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040727-189040733

Status: Excess

Base Closure: Yes

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 3

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040772

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Bus shelter.

Bldg. 355

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040769

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Utility station.

Bldg. 11372

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040794

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Bus shelter.

Bldg. 106

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040806

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Sewage pump station.

Bldg. 161

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040807

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Pump station.

Bldg. 203

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040808

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Sewage pump station.

Bldg. 225

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040809

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Pump station.

Bldg. 312

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040810

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 317

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040811

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 321

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040812

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 325

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040813

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 327

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040814

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Pump station.

Bldg. 330

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040815

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 334

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040816

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 339

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040817

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 343

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040818

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Power station.

Bldg. 360

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040819

Status: Excess

Base Closure: Yes

Reason: Other

Comment: Pump station.

Bldg. 395

Pease Air Force Base

Pease AFB, NH, Co.: Rockingham 03803-

Federal Register Notice Date: 03/15/91

Property Number: 189040820

Status: Excess

Base Closure: Yes
Reason: Other
Comment: Pump station.
Bldg. 414
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040821
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.
Bldg. 422
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040822
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.
Bldg. 428
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040823
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.
Bldg. 429
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040824
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.
Bldg. 1000
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040825
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Sewage pump station.
Bldgs. 35016, 35022, 35068, 35090, 35092, 35153,
35155, 35202, 35211, 35227, 35238, 35241,
35321, 35327, 35330, 35334, 35351, 35355,
35359, 35408, 35419, 35432
Pease Air Force Base Pease AFB, NH Co:
Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Numbers: 189040830–189040851
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.
Universe of Properties:
Total.....112
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....318
Unsuitable Buildings.....304
Unsuitable Land.....14
Number of Resubmission.....0
New York
Unsuitable Buildings (by Agency)
Navy
Bldg. R-95

Naval Station
207 Flushing Avenue
Brooklyn, NY Co: Kings 11251—
Federal Register Notice Date: 03/15/91
Property Number: 779010256
Status: Unutilized
Base Closure: Yes
Reason: Secured Area.
Bldg. RD
Naval Station
207 Flushing Avenue
Brooklyn, NY, Co: Kings 11251—
Federal Register Notice Date: 03/15/91
Property Number: 779010257
Status: Underutilized
Base Closure: Yes
Reason: Secured Area.
Bldg. 305
Naval Station
207 Flushing Avenue
Brooklyn, NY, Co: Kings 11251—
Federal Register Notice Date: 03/15/91
Property Number: 779010258
Status: Underutilized
Base Closure: Yes
Reason: Secured Area.
Air Force
Bldg. 518 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14304–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010073
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.
Bldg. 524 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14303–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010074
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.
Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14303–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010075
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.
Navy
Bldg. 204
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390—
Federal Register Notice Date: 03/15/91
Property Number: 779010270
Status: Excess
Base Closure: No
Reason: Secured Area.
Bldg. 255
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390—
Federal Register Notice Date: 03/15/91
Property Number: 779010271
Status: Excess

Base Closure: No
Reason: Secured Area.
Bldg. T-370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390—
Federal Register Notice Date: 03/15/91
Property Number: 779010272
Status: Excess
Base Closure: No
Reason: Secured Area.
Universe of Properties:
Total.....9
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....327
Unsuitable Buildings.....313
Unsuitable Land.....14
Number of Resubmission.....0

Ohio*Unsuitable Buildings (by Agency)*

Air Force
Facility 30092
Wright-Patterson Air Force Base
(See County), OH, Co: Greene 45433–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010266
Status: Unutilized
Base Closure: No
Reason: Secured Area.
Facility 30205
Wright-Patterson Air Force Base
Greene, OH, Co: Green 45433—
Federal Register Notice Date: 03/15/91
Property Number: 189010434
Status: Unutilized
Base Closure: No
Reason: Secured Area.
Universe of Properties:
Total.....2
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....329
Unsuitable Buildings.....315
Unsuitable Land.....14
Number of Resubmission.....0

Oklahoma*Unsuitable Buildings (by Agency)*

Air Force
Bldg. 604
Vance Air Force Base
Enid, OK, Co: Garfield 73705–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010204
Status: Unutilized
Base Closure: No
Reason: Secured Area; Within 2000 Ft. of
flammable or explosive material.

Pennsylvania*Unsuitable Buildings (by Agency)*

Navy
Bldg. 62
Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112—
Federal Register Notice Date: 03/15/91
Property Number: 779010112
Status: Unutilized

Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 614

Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112-
Federal Register Notice Date: 03/15/91
Property Number: 779010114
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 650

Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112-
Federal Register Notice Date: 03/15/91
Property Number: 779010117
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 3 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 333 |
| Unsuitable Buildings..... | 319 |
| Unsuitable Land..... | 14 |
| Number of Resubmission..... | 0 |

Puerto Rico

Unsuitable Buildings (by Agency)

Air Force

Bldg. 10

Punta Salinas Radar Site
Toa Baja, PR, Co: Toa Baja
Federal Register Notice Date: 03/15/91
Property Number: 189010544
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Rhode Island

Unsuitable Buildings (by Agency)

Navy

Bldg. 32

Naval Underwater Systems Center
Coul Island Annex
Middletown, RI, Co: Newport 02840-
Federal Register Notice Date: 03/15/91
Property Number: 779010273
Status: Excess
Base Closure: No
Reason: Secured Area
95 Buildings
Naval Construction Battalion Center
Davisville, RI, Co: Washington 02854-
Federal Register Notice Date: 03/15/91
Property Numbers: 779010001-779010023,
779010025, 779010027-779010040, 79010042-
779010061, 779010063-779010065,
779010067, 779010069-779010072,
779010074, 779010076, 779010078, 779010079,
779010232-779010253, 779010276-779010278

Status: Excess

Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Universe of Properties:

| | |
|-------------------------|-----|
| Total..... | 96 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 430 |

| | |
|-----------------------------|-----|
| Unsuitable Buildings..... | 416 |
| Unsuitable Land..... | 14 |
| Number of Resubmission..... | 0 |

South Dakota

Unsuitable Buildings (by Agency)

Air Force

154 Bldgs. at Renel Heights
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Pennington 57706-
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010443-189010521,
189010732-189010759, 189030016-189030032,
189040027-189040055, 189040058

Status: Unutilized

Base Closure: No

Reason: Other

Comment: Earth movement/shifting, cracked
exterior and interior walls with separations
several inches wide; earth shift severed
sewer lines.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 154 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 584 |
| Unsuitable Buildings..... | 570 |
| Unsuitable Land..... | 14 |
| Number of Resubmission..... | 0 |

Texas

Unsuitable Buildings (by Agency)

Air Force

Bldg. 2005

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010162
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 124

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010163
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 146

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010164
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 42

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010165
Status: Excess
Base Closure: No

Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 23

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010166
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 16

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010167
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 73

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010205
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 81

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010206
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 100

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010207
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 246

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010208
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 503

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010209
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 645

Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489-
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010210
Status: Excess

Base Closure: No

Reason: Secured Area.

Navy

Bldgs. 2426, 2432, 2476, 2498, 2504, 1730, 2422,
2425, 2430, 2434, 2449, 2450, 2453, 2455, 2456,
2463, 2483, 2516, 2524, 2528

Laguna Shores Housing Area

Corpus Christi, TX, Co: Nueces 78419-

Federal Register Notice Date: 03/15/91

Property Number: 779010279-779010298

Status: Underutilized

Base Closure: No

Reason: Floodway.

Air Force

Bldg. 400

Laughlin Air Force Base

Val Verde Co., TX, Co: Val Verde 78843-50000

Location: Six miles on Highway 90 east of Del Rio, Texas

Federal Register Notice Date: 03/15/91

Property Number: 189010173

Status: Underutilized

Base Closure: No

Reason: Within 2,000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 314

Laughlin Air Force Base

Val Verde Co., TX, Co: Val Verde 78843-5000

Location: Six miles on Highway 90 east of Del Rio, Texas

Federal Register Notice Date: 03/15/91

Property Number: 189010174

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 315

Laughlin Air Force Base

Val Verde Co., TX, Co: Val Verde 78843-5000

Location: Six miles on Highway 90 east of Del Rio, Texas

Federal Register Notice Date: 03/15/91

Property Number: 189010175

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 63

Laughlin Air Force Base

Val Verde Co., TX, Co: Val Verde 78843-5000

Location: Six miles on Highway 90 east of Del Rio, Texas

Federal Register Notice Date: 03/15/91

Property Number: 189010176

Status: Unutilized

Base Closure: No

Reason: Within 2,000 ft. of flammable or explosive material.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 36 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 620 |
| Unsuitable Buildings..... | 606 |
| Unsuitable Land..... | 14 |
| Number of Resubmission..... | 0 |

Utah

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 2007, 2008, 2122, 2126, 2144, 2216, 2224-
2226, 2243, 2245, 2249, 2310, 2313, 2315-2317,
2331, 2334, 2336-2338

Hill Air Force Base

(See County), UT, Co: Davis 84056-

Federal Register Notice Date: 03/15/91

Property Numbers: 189010274-189010295

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldgs. 788-790

Hill Air Force Base

(See County), UT, Co: Davis 84056-

Federal Register Notice Date: 03/15/91

Property Numbers: 189040858-1899040860

Status: Unutilized

Base Closure: No

Reason: Within airport runway clear zone; Secured Area.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 25 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 645 |
| Unsuitable Buildings..... | 631 |
| Unsuitable Land..... | 14 |
| Number of Resubmission..... | 0 |

Virginia

Unsuitable Land (by Agency)

Air Force

ANG Site

Camp Pendleton

Virginia Air National Guard

Virginia Beach, VA, Co: (See County) 23451-

Federal Register Notice Date: 03/15/91

Property Number: 189010589

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Parcel 1 (Byrd Field)

Richmond IAP

5680 Beulah Road

Richmond, VA, Co: Henrico 23150-

Federal Register Notice Date: 03/15/91

Property Number: 189010435

Status: Unutilized

Base Closure: No

Reason: Floodway.

Parcel 3 (Byrd Field)

Richmond IAP

5680 Beulah Road

Richmond, VA, Co: Henrico 23150-

Federal Register Notice Date: 03/15/91

Property Number: 189010436

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material

Parcel 2 (Byrd Field)

Richmond IAP

5680 Beulah Road

Richmond, VA, Co: Henrico 23150-

Federal Register Notice Date: 03/15/91

Property Number: 189010437

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 4 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 649 |
| Unsuitable Buildings..... | 631 |
| Unsuitable Land..... | 18 |
| Number of Resubmission..... | 0 |

Washington

Unsuitable Land (by Agency)

Navy

Land (Report 2), 234 acres

Naval Supply Center, Puget Sound

Manchester, WA, Co: Kitsap 98353-

Federal Register Notice Date: 03/15/91

Property Number: 779010231

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 57

Naval Supply Center, Puget Sound

Manchester, WA, Co: Kitsap 98353-

Federal Register Notice Date: 03/15/91

Property Number: 779010091

Status: Unutilized

Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 47 (Report 1)

Naval Supply Center, Puget Sound

Manchester, WA, Co: Kitsap 98353-

Federal Register Notice Date: 03/15/91

Property Number: 779010230

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Unsuitable Land (by Agency)

Air Force

Fairchild AFB

SE corner of base

Fairchild AFB, WA, Co: Spokane 99011-

Federal Register Notice Date: 03/15/91

Property Number: 189010137

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Fairchild AFB

Fairchild AFB, WA, Co: Spokane 99011-

Location: NW corner of base

Federal Register Notice Date: 03/15/91

Property Number: 189010138

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldgs. 640-643, 645-647

Fairchild AFB

Fairchild, WA, Co: Spokane 99011-

Federal Register Notice Date: 03/15/91

Property Numbers: 189010139-189010145

Status: Unutilized

Base Closure: No

Reason: Secured Area.

Bldgs. 1415, 1429, 1464, 1465, 1466

Fairchild AFB

Fairchild, WA, Co: Spokane 99011-

Federal Register Notice Date: 03/15/91

Property Numbers: 189010146-189010150
 Status: Unutilized
 Base Closure: No
 Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
 Bldgs. 3503-3507, 3510, 3514, 3518, 3521
 Fairchild AFB
 Fairchild, WA, Co: Spokane 99011-
 Federal Register Notice Date: 03/15/91
 Property Number: 189010151-189010159
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.
Universe of Properties:

| | |
|-----------------------------|-----|
| Total..... | 26 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 675 |
| Unsuitable Buildings..... | 654 |
| Unsuitable Land..... | 21 |
| Number of Resubmission..... | 0 |

Wyoming

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 31, 34, 37, 284, 385, 803
 F. E. Warren Air Force Base
 Cheyenne, WY, Co: Laramie 82005-
 Federal Register Notice Date: 03/15/91
 Property Numbers: 189010198-189010203
 Status: Unutilized
 Base Closure: No
 Reason: Secured Area.
Universe of Properties:

| | |
|------------------------------|-----|
| Total..... | 6 |
| Suitable..... | 0 |
| Suitable Buildings..... | 0 |
| Suitable Land..... | 0 |
| Unsuitable..... | 661 |
| Unsuitable Buildings..... | 660 |
| Unsuitable Land..... | 21 |
| Number of Resubmissions..... | 0 |

[FR Doc. 91-6051 Filed 3-14-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-01-4410-08]

Montana; District Multiple-Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District multiple-use advisory council meeting.

SUMMARY: The Lewistown District Multiple Use Advisory Council will meet on April 15, 1991, at 10 a.m. at the Lewistown District BLM Office on Airport Road in Lewistown, Montana. The agenda topics will include:

1. Welcoming new council members; and

2. Discussing portions of the Judith, Valley and Phillips RMP.

The meeting will be open to the public and interested persons may make oral

statements to the council at the conclusion of the meeting or may file written comments for the council's consideration. Anyone wishing to make oral statements must notify the Lewistown District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

Dated: March 8, 1991.

B. Gene Miller,

Acting District Manager.

[FR Doc. 91-6142 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW116374]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116374 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116374 effective November 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91-6143 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-01-5410-AZFA; AZA-23560]

Arizona; Realty Actions

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,

Sec. 33, S½S½;
 Sec. 34, S½.
 T. 7 S., R. 11 E.,
 Sec. 25, all.
 T. 7 S., R. 12 E.,
 Sec. 3, lots 1, 2, S½NE¼.
 T. 7 S., R. 13 E.,
 Sec. 12, S½;
 Sec. 13, E½;
 Sec. 27, SW¼SW¼.
 T. 7 S., R. 14 E.,
 Sec. 17, E½, S½NW¼, SW¼;
 Sec. 21, N½NW¼;
 Sec. 26, S½NW¼, S½;
 Sec. 27, W½;
 Sec. 28, E½, SW¼;
 Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
 Sec. 30, NE¼NE¼;
 Sec. 31, lots 1 to 4, incl., SE¼SW¼, S½SE¼;
 Sec. 32, W½;
 Sec. 33, W½, SE¼;
 Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
 T. 8 S., R. 13 E.,
 Sec. 8, E½;
 Sec. 9, S½;
 Sec. 11, E½;
 Sec. 12, SW¼NW¼, W½SW¼, SE¼SW¼;
 Sec. 13, N½N½;
 Sec. 14, SW¼, S½SE¼;
 Sec. 15, E½SW¼, W½SE¼;
 Sec. 22, all;
 Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
 Sec. 25, all;
 Sec. 26, N½;
 Sec. 27, all.
 T. 8 S., R. 14 E.,
 Sec. 2, S½;
 Sec. 5, all;
 Sec. 6, lot 6, NE¼SW¼;
 Sec. 7, E½;
 Sec. 8, all;
 Sec. 11, N½;
 Sec. 14, all;
 Sec. 18, lot 1, NE¼, NE¼NW¼;
 Sec. 20, W½;
 Sec. 22, SE¼;
 Sec. 23, S½S½;
 Sec. 24, E½, SW¼;
 Sec. 26, N½N½;
 Sec. 27, NE¼;
 Sec. 29, N½NW¼;
 Sec. 30, NE¼, N½SE¼.

Containing 15,207.25 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final

rejection of the application or two years from October 5, 1990.

Dated: March 5, 1991.

Charles R. Frost,

Associate District Manager.

[FR Doc. 91-6144 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-32-M

[G-010-4212-13/G1-0108; NMNM 83264]

Realty Action on Proposed Land Exchange in San Miguel County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NMNM 83264.

SUMMARY: This notice is to advise that the following described public lands have been determined to be suitable for disposal through exchange or sale under section 203 and section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 15 N., R. 22 E.

Sec. 14, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Sec. 22, NW $\frac{1}{4}$ NE $\frac{1}{4}$

Sec. 23, SW $\frac{1}{4}$ NW $\frac{1}{4}$

Sec. 27, NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$.

Comprising of 480 acres.

In exchange for 400 acres identified above, the United States will acquire the following described lands from the Church of Spiritual Technology (CST) of Las Vegas, New Mexico:

New Mexico Principal Meridian

T. 17 N., R. 23 E.

Sec. 14, SE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 23, SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$

Sec. 27, S $\frac{1}{2}$

Sec. 34, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Comprising of 400 acres.

The public land identified for disposal is located about 40 miles east of Las Vegas, New Mexico, and receives little public use. The land is currently leased for grazing and the permittee will be notified that the grazing permit could be reduced or canceled. There are no range improvements on the public land. The private lands are located about 20 miles north of the public land and have high resource value in terms of wildlife habitat and recreation, including hiking and hunting.

This exchange proposal is consistent with the Resource Management Plan (RMP) for the Taos Resource Area in that the public land has been identified for disposal and the private land is in an area for retention. Specifically, the private land is within the Sabinoso Wilderness Study Area included in the

RMP. The exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money, or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publications of this notice segregates the public land from the operation of all public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land report is available for review at the Taos Resource Area, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758-8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: March 8, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-6145 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-FB-M

[G-010-4212-13/G1-0106; NMNM 83254]

Realty Action on Proposed Land Exchange in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NMNM-83254.

SUMMARY: This notice is to advise that the following described public lands have been determined to be suitable for disposal through exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 28 N., R. 10 E.

Sec. 30, Lots 4, 9, 10

comprising 53.21 acres.

In exchange for these lands, the United States will acquire the following described lands from Mr. Louis Menyhert of Albuquerque, New Mexico:

New Mexico Principal Meridian

T. 29 N., R. 9 E.

Sec. 13, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$

comprising 50 acres.

The public land identified for disposal is located about 4 miles east of the small community of Tres Piedras, New Mexico and receives little public use. The land is currently leased for grazing and the permittee will be notified that the grazing permit could be reduced. There are no range improvements on the public land. The private lands are located about 10 miles northeast of Tres Piedras, New Mexico and have high resource value in terms of wildlife habitat and recreation including hiking and hunting.

This exchange proposal is consistent with the Resource Management Plan (RMP) for the Taos Resource Area in that the public land has been identified for disposal and the private land is in an area for retention. Exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations.

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publication of this notice segregates the public land from the operation of all the public laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land report, is available for review at the Taos Resource Area Office, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758-8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: March 8, 1991.

Robert T. Dale,
District Manager.

[FR Doc. 91-6146 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Upcoming Concession Opportunity Within the Rocky Mountain National Park

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to issue a Statement of Requirements soliciting bids from private individuals and corporations to operate commercial visitor facilities and services at the Hidden Valley Ski Area within Rocky Mountain National Park, Colorado. The concession is currently operated by the Estes Valley Recreation and Park District. The National Park Service is providing advance notice of this offering to afford interested parties the opportunity to inspect the facilities and services during the months of winter operation while the ski area is open. The National Park Service expects to publish the Statement of Requirements in the near future.

ADDRESSES: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy., Box 25287, Denver, Colorado 80225 for additional information.

SUPPLEMENTARY INFORMATION: This action complies with the provisions of the National Environmental Policy Act and copies of these environmental documents may be obtained from the Superintendent, Rocky Mountain National Park, Estes Park, Colorado, 80517-8397.

The Estes Valley Recreation and Park District has performed its obligations to the satisfaction of the Secretary of the Interior under an existing contract which expires by limitation of time on May 31, 1991, and, therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 stat. 969; 16 USC 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.1. The Estes Valley Recreation and Park District has notified the National Park Service that it does

not intend to renew its contract to operate the ski area.

Dated: February 28, 1991.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-6191 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

Great Smoky Mountains National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service is preparing an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969. The EIS will evaluate the construction of approximately 10 miles of the Foothills Parkway between Wear Valley Road and the Gatlinburg Spur (section 8D). Alternatives will be based on different design solutions for the construction of the road. They will include mitigation measures in order to protect the environment from actual construction activities and subsequent use of the road. The National Park Service is holding open houses as part of the scoping process. These meetings will be held at the following times and locations. Members of the public are invited to attend and identify any issues and possible environmental impact topics that should be addressed in the EIS. A draft EIS should be available for public review during the summer of 1992. Written comments and suggestions should be submitted to the National Park Service by April 22, 1991. Comments and requests for further information should be directed to Mr. Randall S. Pope, Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738, telephone (615) 436-1201.

DATES AND ADDRESSES:

Thursday, March 21, 1991, 6:30 p.m. to 9:30 p.m.

American Legion, Post 202, Highway 321, North, Gatlinburg, Tennessee 37738.

Saturday, March 23, 1991, 9 a.m. to 2 p.m.

Townsend Elementary School Library, Needham Road, Townsend, Tennessee 37882.

Dated: February 27, 1991.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 91-6188 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

Advisory Board, History Areas Committee; Meeting

AGENCY: National Park Service.

ACTION: Notice of Meeting of History Areas Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. at the following location and date.

DATES: March 25, 1991.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Benjamin Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Telephone (202) 343-8164, or FTS 343-8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on April 24, 1991 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. Robert Burley
Dr. Alfonz Lengyel
Mrs. Anne Walker
Judge Robert Flynn Orr

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations include 7 architectural properties located in California, Indiana, Michigan, New York, and Virginia; 2 maritime resources in Michigan and South Carolina; 2 properties being considered for art and painting located in Connecticut; 23 sites relating to a women's history theme study in Connecticut, Florida, Indiana, Kentucky, Maine, Missouri, New Mexico, New York, Pennsylvania, Washington, DC, and West Virginia; a Civil War site in Mississippi; 2 sites in South Dakota dealing with exploration and the westward movement; a recreation site in

Pennsylvania; an Ohio site relating to the Wright Brothers; and a boundary expansion to an existing mining theme National Historic Landmark in Colorado.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

Dated: March 4, 1991.

Rowland T. Bowers,
Deputy Associate Director, Cultural
Resources, National Park Service, WASO.
[FR Doc. 91-6190 Filed 3-14-91; 8:45 am]
BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, March 27, 1991, at the Visitor Center, Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, 7400 Hwy. 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

- Old Business.
- New Business.
- General Management Plan Update.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Hickman, Acting Superintendent,

Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: February 19, 1991.

Ernest Ortega,
Acting Regional Director, Southwest Region.
[FR Doc. 91-6186 Filed 3-14-91; 8:45 am]
BILLING CODE 4310-70-M

Upper Delaware Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the dates of the meetings of the Upper Delaware Citizens Advisory Council for calendar year 1991. Notice of these meetings is required under the Federal Advisory Committee Act.

| Dates | Type of meeting | Inclement weather reschedule date |
|---------------------|-----------------|-----------------------------------|
| March 22, 1991 | Business | April 12, 1991. |
| April 19, 1991 | Educational | None. |
| May 17, 1991 | Business | None. |
| June 15, 1991 | Educational | None. |
| August 23, 1991 | Business | None. |
| September 29, 1991. | Educational | None. |
| October 25, 1991 | Business | None. |
| November 22, 1991. | Educational | December 13, 1991. |

Press Releases containing specific information regarding the subject of each monthly meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Wayne Independent
The Hawley News Eagle

Announcement of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESSES: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, PO Box C, Narrowsburg, New York 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The advisory council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Public Law 95-625, 16 U.S.C. §1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes or the meeting will be available for inspection four weeks after the meetings, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1 1/4 miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region.
[FR Doc. 91-6198 Filed 3-14-91; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of

Historic Places, National Park Service,
P.O. Box 37127, Washington, DC 20013-
7127.

Attention: Chief of Registration
(Phone: 202-343-9536), Hokuano-
Ualapue National Historic Landmark,
Ualapue, Molokai Island, Hawaii.

Carol D. Shull,

Chief of Registration, National Register of
Historic Places, Interagency Resources
Division.

[FR Doc. 91-6192 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following
properties being considered for listing in
the National Register were received by
the National Park Service before
February 27, 1991. Pursuant to § 60.13 of
36 CFR part 60 written comments
concerning the significance of these
properties under the National Register
criteria for evaluation may be forwarded
to the National Register, National Park
Service, P.O. Box 37127, Washington, DC
20013-7127. Written comments should
be submitted by April 15, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Great Captain Island Lighthouse, Great
Captain Island, SW of Greenwich Pt.,
Greenwich, 91000351.

Stamford Harbor Lighthouse, South of
breakwater, Stamford Harbor, Stamford,
91000348.

Hartford County

St. Mary's Parochial School, Beaver St. S of
Broad St., New Britain, 91000364.

Litchfield County

Villa Friuli, 58 High St., Torrington, 91000349.

Middlesex County

Lee, Daniel and Mary, House, Pepperidge Rd.
E of Jobs Pond Rd., Portland, 91000365.

Windham County

Plainfield Street Historic District, Roughly,
Norwich Rd. from Railroad Ave. to
Academy Hill Rd., Plainfield, 91000350.

KENTUCKY

Kenton County

Covington Downtown Commercial Historic
District (Boundary Increase), Roughly
bounded by Ninth, Washington and
Seventh Sts. and Madison Ave.,
Covington, 91000347.

Marion County

Spalding, Leonard A., House, 307 E. Main St.,
Lebanon, 91000367.

MASSACHUSETTS

Hampshire County

Southampton Center Historic District,
Roughly, High St. from Fomer Rd. to Maple
St., College Hwy. from Clark St. to East St.
and East from College to Clark,
Southampton, 91000363.

Middlesex County

Hildreth, Jonathan, House, 8 Barrett's Mill
Rd., Concord, 91000352.

MICHIGAN

Leelanau County

Bingham District No. 5 Schoolhouse, Jct. of
Co. Rds. 818 and 633, Bingham Township,
Bingham, 91000353.

Wayne County

Harvey, John, House, 97 Winder, Detroit,
91000354.

MONTANA

Cascade County

Great Falls Northside Residential Historic
District, 200-900 blocks 4th Ave. N., 100-
900 blocks 3rd Ave. N. and 500-900 blocks
2nd Ave. N., Great Falls, 91000355.

NEW MEXICO

Dona Ana County

Hadley—Ludwick House, 2640 El Paseo, Las
Cruces, 91000352.

NORTH CAROLINA

Buncombe County

Intheosaks, 510 Vance Ave., Black Mountain,
91000361.

Wake County

Oak View, Jct. of Poole Rd. and Raleigh
Beltline, Raleigh, 91000359.

OKLAHOMA

Sequoyah County

Kirby—Steely Archeological Site, Address
Restricted, Short vicinity, 91000356.

UTAH

Washington County

St. George Social Hall, 212 N. Main St., St.
George, 91000360.

WISCONSIN

Dane County

Elmside Park Mounds, (Late Woodland Stage
in Archeological Region 8 [AD 650-1300]
MPS), Address Restricted, Madison,
91000358.

Vilas Park Mound Group, (Late Woodland
Stage in Archeological Region 8 [AD 650-
1300] MPS), Address Restricted, Madison,
91000357.

[FR Doc. 91-6187 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International
Development (A.I.D.) submitted the
following public information collection
requirements to OMB for review and
clearance under the Paperwork
Reduction Act of 1980, Public Law 96-
511. Comments regarding these
information collections should be
addressed to the OMB reviewer listed at
the end of the entry no later than ten
days after publication. Comments may
also be addressed to, and copies of the
submissions obtained from the Reports
Management Officer, Fred D. Allen,
(703) 875-1573, AS/ISS, room 1209B, SA-
14, Washington, DC 20523-1413.

Date Submitted: February 8, 1991.

Submitting Agency: Agency for
International Development.

OMB Number: 0412-0538.

Form Numbers: AID 1420-62.

Type of Submission: Renewal.

Title: Report of Medical Examination.

Purpose: When A.I.D. hires contractor
personnel for overseas assignments, the
contractors are required to obtain a
physician's certification that they are
physically qualified to engage in the
type of activity for which they will be
employed. Physicians who do not
regularly deal with patients going to
lesser developed countries do not
appreciate the difficulties of providing
even the most basic medical services in
many such areas. The form allows A.I.D.
contractors to be screened by the State
Department's Office of Medical Services
(M/MED) prior to departure to insure
the Mission or Embassy medical facility
can meet special medical needs of the
contractor. Thus the need for future
medical evacuations would be reduced,
since M/MED would find most existing
medical problems that could not be
dealt with locally and the individual
would then most likely be denied
approval to post.

Annual Reporting Burden:

Respondents: 1650; annual responses: 1;
average hours per response: 4; burden
hours: 6600.

Reviewer: Marshall Mills (202) 395-
7340, Office of Management and Budget,
room 3201, New Executive Office
Building, Washington, DC 20503.

Dated: February 7, 1991.
Elizabeth Baltimore,
Information Support Services Division.
[FR Doc. 91-6141 Filed 3-14-91; 8:45 am]
BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440.

2. Wholly-owned subsidiaries which will participate in the operations and addresses of their respective principal offices and place of incorporation:

(i) ACCO Feeds, Inc., P.O. Box 521, Abilene, Texas 79604—Delaware.

(ii) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware.

(iii) Cargill Marine and Terminal, Inc. P.O. Box 9300 Minneapolis, Minnesota 55440—Delaware.

(iv) Cargill Transportation Services, Inc., P.O. Box 5621, Minneapolis, Minnesota 55440—Delaware.

(v) Excell Corporation, P.O. Box 2519, Wichita, Kansas 67201—Delaware.

Subsidiary of Excell Corporation:
(a) Excel Transportation, Inc., P.O. Box 2519, Wichita, Kansas 67201—Kansas.

(vi) Hohenberg Bros. Company, 226 South Front Street, Memphis, Tennessee 38101—Tennessee.

Subsidiary of Hohenberg Bros. Company:

(a) R.T. Hoover & Co., Inc., 900 Hawkins, El Paso, Texas 79915—Texas.

(vii) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware.

(viii) North Star Steel Company, 15407 McGinty Road West, Wayzata, Minnesota 55391-2399—Minnesota.

Subsidiary of North Star Steel Company:

(a) North Star Recycling Company, P.O. Box 868, Monroe, Michigan 48161—Michigan (formerly Magnimet Corporation. See attached documents certifying the change.)

(ix) North Star Steel Texas, Inc., Old Highway 90, Beaumont, Texas 77662—Delaware.

(x) Young's Inc., Rural Route 1, Roaring Spring, Pennsylvania 16673—Pennsylvania

(xi) Sunny Fresh Foods, Inc., P.O. Box 5613, Minneapolis, Minnesota 55440—Delaware.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-6230 Filed 3-14-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Elimination of Requirements That Aliens File a Declaration of Intending Citizen In Order To File a Discrimination Complaint

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given that Immigration and Naturalization Service (INS) forms I-772 and N-315 no longer need to be filed in order to file a charge of discrimination under section 102 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.

DATES: This notice is effective March 15, 1991 and will be applied retroactively.

FOR FURTHER INFORMATION CONTACT: Andrew M. Strojny, Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free) or (202) 653-8121 (Voice) or (202) 296-0168 (local TDD number for the hearing impaired) or (800) 237-2515 (toll free TDD number for the hearing impaired), or Daniel Echavarren, Acting Deputy Special Counsel (202) 653-8260.

SUPPLEMENTARY INFORMATION: The declaration of intention filing requirement eliminated by section 533 of the Immigration Act of 1990, Public Law No. 101-649, 104 Stat. 4978 (1990) (8 U.S.C. 1324b(a)) is being given immediate and retroactive effect by the Office of Special Counsel pending more extensive changes to the applicable regulations. The declaration of intention (e.g. forms I-772 and N-315) will no longer be required in order to file a charge of citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986. All citizenship status discrimination charges pending with the Office of Special Counsel on the date the Immigration Act of 1990 was signed (November 29, 1990), and that were deemed incomplete solely because no declaration of intention had been filed, are deemed complete as November 29, 1990, so long as the time for completing the charge, as defined in 28 CFR

44.301(d)(2), had not run out before that date.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 91-6152 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decrees for Violations of the Clean Air Act Asbestos NESHAP

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on February 27, 1991 two proposed Partial Consent Decrees in *United States v. Interstate Brands, Inc. and Harding Erectors, Inc.*, Civil Action No. CV-90-104-GF-PGH, were lodged with the United States District Court for the District of Montana, Great Falls Division. The Complaint in this case was brought for violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The asbestos NESHAP is codified at 40 CFR part 61, subpart M. The Complaint sought civil penalties for violations of the notice and work practice provisions of the asbestos NESHAP and for injunctive relief.

The proposed Partial Consent Decrees require Interstate Brands, Inc. and Harding Erectors, Inc. to pay civil penalties of, respectively, \$6,500 and \$40,000. Additionally, each defendant has agreed to test for asbestos using EPA-approved methods prior to any future renovation or demolition project, to permit EPA access to conduct inspections at future renovation or demolition projects and to comply with all provisions of the asbestos NESHAP, 40 CFR part 61, subpart M. Stipulated penalties apply for failure to comply with these provisions of the Decrees.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Interstate Brands, Inc. and Harding Erectors, Inc.*, DOJ Ref. No. 90-5-2-1-1488.

The proposed Partial Consent Decrees may be examined at the Offices of the United States Attorney, room 212,

Federal Building, 215 First Avenue North, Great Falls, Montana 59401, at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. Copies of the proposed Partial Consent Decrees may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of \$2.75 per decree, \$5.50 for both, (\$.25 per page reproduction costs) payable to, "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-6153 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notification, Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P. has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 4, 1991 disclosing the identities of the additional parties to the Smart House Project ("the Project"), and changes in the status of certain participants in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project have changed, are given below.

The following additional party is participating in the venture under a research and licensing agreement:

Micro Cogen Inc.

The following parties previously were participating in the venture under initial negotiation and confidentiality agreements or joint confidentiality agreement and now have executed, and are participating under, research and licensing agreements:

Custom Command Systems, Inc.
Heat-N-Glo Fireplace Products, Inc.
Molex Incorporated
Siemens Energy & Automation, Inc.
Westinghouse Electric Corporation

The following additional parties are participating in the venture under initial negotiation and confidentiality agreements or joint confidentiality agreements and are in the process of negotiating research and licensing agreements:

W.H. Brady Company
Cherokee International, Inc.
Figaro USA, Inc.
Macurco Inc.
Regal Technologies Ltd.
Sonance—A Division of Dana Innovations
Teletrol Systems Inc.

The following entities, which formerly were participating under initial negotiation and confidentiality agreements, no longer are involved in the venture:

Aleph International Corporation
Bose Corporation
Camcar Division of Tectron, Inc.
Challenger Electrical Equipment Corp.
Double Energy Systems
Electromatic Controls Corporation
EPE Technologies, Inc.
Exide Electronics
Goodman Manufacturing Company
Halitec Industries Corporation
Innovative Technology, Inc.
Integrated Communication Systems, Inc.
JAE Electronics, Inc.
Landis & Gyr Metering, Inc.
M&S Systems, Inc.
Nexus Engineering Corporation
Olson Technology Inc.
Southwire Company
Triangle PWC, Inc.
Tri-Star Electronics, Inc.
X-10 (USA) Inc.

The following additional parties are participating in the venture under affiliate agreements or similar arrangements:

Apple Computer, Inc.
D2B Systems Company, Ltd.
Master Builders' Construction & Housing Association Australia, Inc.

The following party previously was participating in the venture under an initial negotiation and confidentiality agreement and now has executed, and is participating under, an affiliate agreement:

Chung-Hsin Electric & Machinery Mfg. Corp.

The following additional parties are participating as advisors to the venture:

Bloodgood Plan Service, Inc.
Canadian Home Builders Association

The following entities, which formerly were participating as advisors, no longer are involved in the venture:

AgipPetroli
Lone Star Gas Company

No other changes have been made in either the membership or the planned activities of the Smart House Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P., the NAHB Research Foundation, Inc., filed the original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, October 27, 1988, June 27, 1989, February 26, 1990, and August 1, 1990, Smart House, L.P. or its predecessor in interest, filed additional written notifications. The Department of Justice published notices in the *Federal Register* in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), on March 21, 1988 (53 FR 9154), on May 3, 1988 (53 FR 15750), on December 8, 1988 (53 FR 49614), on August 23, 1989 (54 FR 35091), on April 9, 1990 (55 FR 13199), and on September 6, 1990 (55 FR 36711), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772-8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6157 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

The National Cooperative Research Notification; Unix International, Inc

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on February 6, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the *Federal Register* pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608). On May 4, 1989, August 1, 1989, October 31, 1989, February 1, 1990, May 1, 1990, July 30, 1990, and November 13, 1990, UNIX filed

additional written notifications. The Department published notices in the *Federal Register* in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), and December 28, 1990 (55 FR 53368), respectively.

As of February 1, 1991, the following have become members of UNIX International, Inc.:

Aggregate Computing, Inc.
AIS
Alenia
Boeing
Computation Center, Osaka University
Computer & Comm. Lab/Indust. Tech. Res. Inst.
Computer Associates International, Inc.
Exxon Production Research Company
Hal Computer Systems
ICL
Integrated Computer Solutions, Inc.
IO Power
Justsystem
Lawrence Livermore National Laboratory
McKeown Integra
Michigan State University Computer Laboratory
NEC-NET Group
Petroleos de Venezulas, S.A.
Polnet Technologies
Project Manager Base ADP
Retix
Scientific Software, Inc.
Sector 7 Software
Software Japan International
SPEKTR
State Institute of Applied Chemistry (GIP)
STATSKONTORET
Supercomputer Systems, Inc.
Tokyo University, Department of Information Science

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6158 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Great Lakes Composites Consortium, Inc.

Notice is hereby given that, on February 25, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composites Consortium, Inc. ("GLCC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the members of GLCC and (2) the nature and objectives of GLCC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b)

of the Act, the identities of the members of GLCC and its general areas of planned activity are given below.

The GLCC is a nonstock, nonprofit corporation organized under the laws of the State of Wisconsin. Its principal place of business is 8400 Lakeview Parkway, suite 800, Kenosha, Wisconsin 53142. The following parties have joined GLCC as members:

Amalga Corporation
Cade Industries
Centerline Equipment Corporation
Cooper Composites
Eaton Corporation
Foster-Miller, Inc.
Grumman Corporation
Johnson Controls
Lovdahl Div/Versa Tech., Inc.
McDonnell Douglas Corporation
Pittsburgh Plate Glass
Production Products
Snap-On Tools Corporation
Sullivan Corporation

The objectives of GLCC include conducting a collaborative effort among industry, academia and government to develop, evaluate, demonstrate and test advanced composites manufacturing technologies. The technical work of GLCC in furtherance of its objectives will reflect current and future needs of the composites industrial community and will include the following general areas of activity relating to composites: (1) Design for manufacturing and advance composite materials components; (2) automated and low cost manufacturing techniques; (3) manufacturing process development; (4) nondestructive tests and evaluations; and (5) repair and maintenance techniques.

Membership in GLCC remains open. GLCC intends to file additional written notifications disclosing changes in membership in GLCC and providing additional information regarding projects undertaken by GLCC and its members. GLCC will continue in existence for an indefinite period of time.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6154 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney

General and the Federal Trade Commission on February 4, 1991, disclosing that there have been changes in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies should be added to the list of PCA members: Coastal Cement Corporation; Dixon-Marquette Cement Company; Heartland Cement Co.; and Illinois Cement Company. Also, Lone Star Industries, Inc. should be deleted from membership in PCA. In addition, Tarmac Virginia Holdings Inc. should now be listed as Roanoke Cement Company.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the *Federal Register* pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, January 31, 1990, May 29, 1990, July 15, 1990, and December 18, 1990, PCA filed additional written notifications. The Department published notices in the *Federal Register* in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), February 1, 1990 (55 FR 3497), March 7, 1990 (55 FR 8204), July 3, 1990 (55 FR 27518), July

19, 1990 (55 FR 29432), and January 25, 1991 (56 FR 2950), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6155 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Semiconductor Research Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on February 19, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: Etec Systems, Inc. as a member of Hestia Corporation, Integrated Silicon Systems, Inc., Sienna Technologies Inc., Tyecin Systems Inc., and WYKO Corporation as affiliate members. General Electric Company/RCA withdrew as a member of SRC. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123-24. Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389-390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6156 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Bureau of Justice Assistance

Bureau of Justice Statistics

Improvement of Criminal History Record Information and Identification of Convicted Felons

AGENCY: Bureau of Justice Assistance and Bureau of Justice Statistics, DOJ.

ACTION: Notice of program announcement.

SUMMARY: The Bureau of Justice Assistance (BJA) and the Bureau of Justice Statistics (BJS) are publishing this notice to announce the Fiscal Year 1991 continuation of an annual \$9,000,000 program planned for each of three fiscal years (Fiscal Years 1990, 1991, and 1992) to assist the States in improving the accuracy, completeness, and timeliness of criminal history record information residing at centralized State repositories and providing such information to the Federal Bureau of Investigation (FBI) according to newly-developed voluntary reporting standards. These improvements are designed to serve the entire criminal justice system by ensuring more accurate and comprehensive criminal history record information and by making it possible to identify convicted felons accurately for such purposes as determining noneligibility for firearms purchases. This program is being administered by BJS, in collaboration with the funding agency, BJA.

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting to the State's central repository. Funding will be provided to the maximum number of States. It is anticipated that most States will participate in the program.

This program is for the development and implementation of systems and procedures designed to: (1) Enhance State criminal history records in order to identify convicted felons accurately; (2) meet the new FBI voluntary reporting standards for identifying such individuals; and (3) improve the quality and timeliness of criminal history record information. A primary focus of this program is to identify impediments to the reporting of dispositions of criminal cases, to develop plans and procedures to improve such reporting, and to allocate resources to overcome obstacles to complete disposition reporting.

SUPPLEMENTARY INFORMATION: Background

Section 6213 of the Anti-Drug Abuse Act of 1988 required the Attorney General to report to Congress by November of 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. A Task Force on Felon Identification of Firearms Sales was established to develop a range of options that would comply with the statute. In October 1989, the Task Force completed its final report and forwarded it to the Attorney General for consideration. The Task Force identified several possible options for systems to identify felons who attempt to purchase firearms, but made no specific recommendations. The report also identified major problems in the quality and completeness of criminal history records and the ability to identify individuals convicted of felony offenses.

In his report to Congress of November 20, 1989, the Attorney General recommended a four-part program to enhance efforts to stop firearms sales to felons. One recommendation was to use \$9 million of Anti-Drug Abuse Act Discretionary Funds in each of the next three years to fund States for the purpose of achieving compliance with the new FBI voluntary reporting standards and to improve the data quality of State criminal history record information. This program announcement is for the continued implementation of the Attorney General's report.

Objectives

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting and encouraging States with nonautomated systems to consider automation. Each State must determine the activities which will contribute the most toward meeting program objectives and State goals. Funding will be provided to the maximum number of possible States. It is anticipated that most States will participate in the program. Fiscal and technical assistance will be provided to improve the accuracy, completeness, and timeliness of criminal history record information in centralized State repositories; to identify accurately criminal history records which contain a conviction for an offense classified as a felony (or equivalent) within the State; and to meet the FBI's newly-developed voluntary reporting standards.

Type of Assistance

Assistance is in the form of cooperative agreements.

Statutory Authority

The funds for this program will come from the Bureau of Justice Assistance under the provisions of 42 U.S.C. 3760 and will be administered by the Bureau of Justice Statistics under the provisions of 42 U.S.C. 3785(c).

Eligibility Requirements

Applicants should be the State agency responsible for directing or overseeing the repository of statewide criminal history files on persons arrested for fingerprintable offenses within the State. Agencies responsible for reporting dispositions to the criminal history repository are also eligible to receive funds. In developing an application, repositories will coordinate with all agencies that provide disposition data. A single application with funding for one or more agencies is preferred. However, if that is not possible, coordinated applications from more than one agency will be considered. If a single application requests funding for more than one agency, separate budget items and the assignment of tasks for each agency must be identified and justified. Fiscal transfer mechanisms consistent with State law and/or administrative procedures must be followed.

Scope of Work

The focus of this program is to identify accurately those individuals convicted of an offense classified as a felony (or equivalent) within the State; to improve reporting of criminal justice actions and dispositions to State criminal history record systems (particularly those arrests and dispositions occurring in the last 5 years); to increase automation of criminal history records at the State level; to meet the voluntary reporting standards of the FBI; and to make felon conviction information readily available to appropriate Federal and State requesting agencies.

Funds will be provided for the following activities:

1. Development of systems and procedures to identify convicted felons through an examination of the subject's automated or manual criminal history record and to include a felony "flag" in criminal history records. Such information will be made available for interstate criminal justice purposes. Emphasis should be placed on arrests and convictions made within the last 5

years. Convicted felons should be identified on an ongoing basis.

2. Development of programs and procedures to meet the new FBI voluntary reporting standards for identifying convicted felons, including making such records available to authorized State, local, and Federal criminal justice agencies.

3. Development of systems and procedures designed to improve reporting to the central repository of all arrests, dispositions, and other related criminal justice information.

4. Increase of the degree of criminal history automation by implementing a State master name index (MNI) or enhancing existing automated MNIs by increasing the number of individuals contained in the index. Funds may also be used to place a felony conviction indicator in the MNI.

5. Increase of the degree of criminal history automation by establishing a computerized criminal history (CCH) record system, increasing the number of individuals recorded in existing systems, and improving the quality and timeliness of criminal history records.

Funds normally will not be available for extensive conversion of manual criminal history records. However, if required to meet program objectives, limited funding may be considered in the following order:

- A. Conversion of offender identification information into the master name index. Complete conversion of offenders' manual records will be funded only if an offender becomes active, e.g., a new arrest or disposition information is received.

- B. If arrest data for offenders have been entered into the computerized criminal history (CCH) system and disposition information for offenders is already at the central repository, funds may be utilized for data entry of dispositions. If the disposition data have not been forwarded to the repository, funds may be used to collect the data from the source of the information and to enter the collected data into the criminal history record.

In either instance, the State must submit a detailed, cost-effective strategy for conversion activities before funding will be considered. This strategy must also describe plans and procedures which have been or will be implemented to prevent future backlogs. Because of the extraordinary costs involved in data conversion, the strategy must also include a description of the priorities to be followed in converting the data. In any event, funds for data conversion and data entry tasks are limited to 1 year.

States must develop a cost effective strategy designed to meet the needs of criminal justice practitioners and to

identify felons before costs for conversion activities will be considered.

Limited funds will be available to States for technical assistance to design a CCH system or to develop a strategy for data conversion. Additional funding may be available for system or data conversion once the necessary system design has been completed.

Funds for computer software are limited to new programming and to systems modifications necessary to meet program requirements such as identifying felons or interfacing with court data processing systems to capture disposition data electronically. Program funds may not be used to rewrite completely or to make extensive upgrades to existing criminal history or court systems software unless it can be positively shown that the new program requirements cannot otherwise be met. In these rare instances, requests will be considered for funding up to 50% of a major upgrade or rewrite to meet specific program requirements and State needs.

6. Development of procedures to participate in Interstate Identification Index (III) or other FBI "pointer" system programs where it will facilitate the goals of this program. In any case, participation will not be funded unless efforts have been or will be undertaken to identify individuals convicted of a felony for purposes of sharing this information with appropriate Federal and State agencies.

7. Conduct a baseline audit of criminal history record systems to assess existing data quality levels, identify problems in the present system, and establish a basis for evaluating the success of a data quality improvement program.

If a data quality audit has been conducted in the past 3 years, program funds may be used to implement the findings. The results of the recently-completed audit and its recommendations must be contained in the application. Activities currently being undertaken by the State as a result of the audit should also be identified.

8. Upgrade existing data systems to meet improved data quality requirements by obtaining auxiliary equipment such as disks, printers, and communication lines. With the exception of those few States automating their systems for the first time, funding for computer hardware is limited to that auxiliary equipment necessary to upgrade existing systems to meet the requirements of this program. Program funds may not be used to obtain or replace primary CCH equipment, regardless of its age or

condition, unless criminal history record information is being automated for the first time and currently available equipment in the States repository is at its maximum capability. All requests for equipment must be documented and justified.

9. Interface and coordinate activities under this program with agencies participating in the Bureau of Justice Assistance formula grant program for the improvement of criminal justice records.

Award Procedures

Awards under this program will be made to further those activities outlined in the Scope of Work. Awards for activities 1 and 2 will be made to support the development of an automated system within the State to identify convicted felons and meet FBI voluntary reporting standards. Substantial funds for activities 3 through 9 will not be made available until a detailed implementation plan has been developed. The plan shall include a needs analysis assessing the current state of data quality (ideally including a baseline audit), detailed specifications for data quality improvements, and a demonstration of support from the relevant criminal justice agencies within the State. Funds of up to \$150,000 will be available for technical assistance in the development of the plan.

Pilot projects are encouraged, whether they are for first-time systems or for enhancements to existing procedures. However, such projects are limited in scope and should set the stage for subsequent statewide implementation using State funds. Up to \$150,000 will be available for pilot projects. A discussion of the project and how the State plans to implement the results must be provided.

There is no requirement for either hard (cash) or soft (in-kind services) matching funding from the State. However, applicants are encouraged to offer either or both types of matching resources. States which are able to provide hard or soft match and meet other programmatic guidelines will be given preference over those States with no match. The absence of matching resources will not disqualify States from receiving funding.

Whether or not States seek funding for activities 1 and 2 above, it is a condition of the grant program that States receiving implementation funds must have in place or must have initiated procedures to identify convicted felons on an ongoing basis and, to the extent feasible, to identify previously convicted felons in existing criminal history records. In order to receive continued implementation

funding, States should be making significant progress toward meeting the new FBI standards for the interstate exchange of information on convicted felons.

All applications must identify each of the activities for which funds will be expended and describe in detail how such activities will be carried out. Measures of timeliness, accuracy, and completeness that will be achieved with Federal funds must be specified.

Each application must include a plan of procedures, including milestones, developed to identify the number of arrests showing final dispositions and the number of conviction records that can be identified as felony convictions. Each application will include a current count of the number of arrests showing final dispositions and, where there are conviction records, the number of felony convictions. At the end of each grant year, the recipient must update this information and report the results to BJS.

To ensure that this national program realizes its objectives in the most productive manner, each applicant must agree to participate in a comprehensive evaluation effort if an award is made. The evaluation will take place during the course of the program and involve each participating State. It is expected that the evaluation will have minimal impact on State program personnel and resources. Details of the timing of the evaluation and the information to be collected will be forwarded in a separate document.

If a State is receiving Bureau of Justice Assistance (BJA) formula grant funds for the Improvement of Criminal Justice Records, the application must identify and discuss those activities which are undertaken in conjunction with this program. A separate section of the application must address the interface considerations between this program and formula funding.

Applications will be judged on the basis of: (1) The technical feasibility; (2) the soundness of the proposed approach in meeting program objectives; (3) the type and qualifications of personnel assigned to the project; (4) the reasonableness of the budget; (5) the past record of the State's performance in the development of automated criminal history records systems; (6) the completion of previous analyses and audits of the existing criminal history system; and (7) the degree of commitment to the project as evidenced by letters of endorsement from participating criminal justice agencies, including the agency or agencies responsible for disposition reporting. The plan for improving criminal history

records systems must indicate the active participation of the agency or agencies responsible for disposition reporting in the development of the application.

Application and Awards Process

Potential grantees should contact the BJS program manager for their State at (202) 307-0770 prior to submitting an application. An original and two (2) applications must be submitted on SF 424 (Revision 1988), including the Certified Assurances. Applications must be accompanied by OJP Form 4061/3, Certification Regarding Drug Free Workplace and OJP Form 4061/2, Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must complete the certificate regarding lobbying and, if appropriate, complete and submit Standard Form LLL, "Disclosure of Lobbying Activities". Applications should be sent to: Applications Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue, NW., room 1144-G, Washington, DC 20531.

All applications must include a proposed budget containing detailed costs for personnel, fringe benefits, travel, equipment, supplies, and other expenses such as telephone and postage. Contractual services or equipment must be procured competitively or the application must contain a sole-source justification. A program narrative must be included detailing all project objectives, major events, activities, products, and a timetable for completion. Applications should contain an evaluation plan designed to measure project objectives. Attachments to the program narrative should include letters of agreement from participating criminal justice agencies.

For funding in fiscal year 1991 (October 1, 1990-September 30, 1991), applications must be received by June 30, 1991. First year awards will be made within 90 days and normally will be for 12 months. Applications for continuation funding, where appropriate, should be submitted 90 days prior to the end of the current grant period. New awards will be given preference if resources become limited. Awards for up to 24 months may be considered if adequate systems implementation planning has been completed and realistic milestone dates are provided. The amount of funds per State will depend upon the number of applicants requesting new and continuation funding. It is anticipated that few, if any, awards for a single grant period will be in excess of \$500,000. The effective date of the award for those applications that are accepted will be

within 90 days from the date of the BJS letter of acknowledgement.

Dated March 11, 1991.

Steven D. Dillingham,
Director, Bureau of Justice Statistics.

Dated: March 11, 1991.

Gerald P. Regier,
Acting Director, Bureau of Justice Assistance.

[FR Doc. 91-6228 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/reporting requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new

collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing the recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor,

200 Constitution Avenue, NW, room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Veterans' Employment and Training Service.

One time, non-recurring.

Individuals or households.

2,805 respondents; 934 total hours; .333 hours per response. This survey will collect data on the post-separation employment patterns of new military veterans in order to evaluate the impact of the Transition Assistance Program. Specifically measured will be length of unemployment after separation and salary history.

Extension

Employment and Training Administration.

1205-0016; ETA 563 and 9027.

Quarterly.

State or local governments.

| Form No. | Affected public | Respondents | Average Responses | Average time per response (minutes) |
|------------------|---------------------------------|-------------|-------------------|-------------------------------------|
| ETA 563..... | State or local governments..... | 45 | 63 | 12 |
| ETA 9027..... | State or local governments..... | 52 | 4 | 15 |
| Total hours..... | | | | 2,320 |

Quarterly data on Trade Adjustment Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the Trade Adjustment Assistance Program. Quarterly number of waivers of training issued and revoked by reason are needed for proper administration and to provide statutorily required report to the Congress.

Signed at Washington, DC this 12th day of March, 1991.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.

[FR Doc. 91-6214 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes

of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office

document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the *Federal Register* are in parentheses following the decisions being modified.

Volume I:

| | |
|--|---------------------------|
| Connecticut, CT91-1 (Feb. 22, 1991). | p. 63, pp. 64, 68 |
| Delaware, DE91-2 (Feb. 22, 1991). | p. 95, pp. 96-97 |
| Massachusetts: MA91-2 (Feb. 22, 1991). | p. 439, pp. 440-443 |
| MA91-3 (Feb. 22, 1991). | p. 453, pp. 454-456 |
| New Jersey, NJ91-2 (Feb. 22, 1991). | p. 701, pp. 703, 705, 707 |
| Pennsylvania, PA91-1 (Feb. 22, 1991). | p. 953, p. 954 |

Volume II:

| | |
|-----------------------------------|------------------|
| Arkansas, AR91-1 (Feb. 22, 1991). | p. 3, p. 4 |
| Iowa, IA91-5 (Feb. 22, 1991). | p. 41, pp. 42-46 |

Volume III:

| | |
|----------------------------------|----------------------|
| Alaska, AK91-1 (Feb. 22, 1991). | p. 1, pp. 2-3 |
| Arizona: AZ91-1 (Feb. 22, 1991). | p. 9, p. 10 |
| Arizona, AZ91-3 (Feb. 22, 1991). | p. 27, p. 28 |
| Idaho, ID91-1 (Feb. 22, 1991). | p. 207, p. 208 |
| Oregon, OR91-1 (Feb. 22, 1991). | p. 371, pp. 372-380. |

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume.

Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of March 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-6024 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

| Petitioner (Union/Workers/Firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|------------------|---------------|------------------|--------------|------------------------|
| AT&T Communications Products (IBEW) | Shreveport, LA | 03/04/91 | 02/22/91 | 25,487 | Communication Systems |
| Barry of San Angelo (Wkrs) | San Angelo, TX | 03/04/91 | 02/19/91 | 25,488 | Footware. |
| Cooper Indust. Inc./Bussman Div. (IUE) | Bristol, CT | 03/04/91 | 02/21/91 | 25,489 | Fuses. |
| Cor-Mac Vanguard Machinery (Wkrs) | Edison, NJ | 03/04/91 | 01/04/91 | 25,490 | Machinery. |
| Crane Creek Cedar Corp. (Wkrs) | Amanda Park, WA | 03/04/91 | 02/20/91 | 25,491 | Lumber. |
| Dotta Enterprises Coal Sales (Wkrs) | Coalport, PA | 03/04/91 | 02/22/91 | 25,492 | Coal. |
| Durham Knitting Mills (Wkrs) | Soddy Daisy, TN | 03/04/91 | 02/22/91 | 25,493 | Sportswear. |
| EPI International (UPWI) | Port Newark, NJ | 03/04/91 | 02/20/91 | 25,494 | Toys & Supplies. |
| General Engines, Inc. (Boilermakers) | Thorofare, NJ | 03/04/91 | 02/19/91 | 25,495 | Trash Recycling Units. |
| General Motors-S.P.O. (Wkrs) | Pittsburgh, PA | 03/04/91 | 02/21/91 | 25,496 | Auto Parts. |
| Geoffrey Beene (ILGWU) | New York, NY | 03/04/91 | 02/12/91 | 25,497 | Dresses. |
| International Marine System Industries (Wkrs) | Guilford, CT | 03/04/91 | 02/20/91 | 25,498 | Marine Radar. |
| Jack Cooper Auto Transports (Wkrs) | Kansas City, KS | 03/04/91 | 02/22/91 | 25,499 | Cars. |
| Kenbridge Sportswear (Wkrs) | Kenbridge, VA | 03/04/91 | 01/31/91 | 25,500 | Shirts. |
| Komatsu Dresser, Inc. (IAM) | Gallion, OH | 03/04/91 | 02/22/91 | 25,501 | Construct. Equip. |
| LADD Petroleum, Gulf Reg. (Wkrs) | Houston, TX | 03/04/91 | 02/25/91 | 25,502 | Petroleum. |
| LADD Petroleum, Headq. (Wkrs) | Denver, CO | 03/04/91 | 02/25/91 | 25,503 | Petroleum. |
| LADD Petroleum, Mid-Continent/East (Wkrs) | Tulsa, OK | 03/04/91 | 02/25/91 | 25,504 | Petroleum. |
| LADD Petroleum, Mid-Continent/West (Wkrs) | Denver, CO | 03/04/91 | 02/25/91 | 25,505 | Petroleum. |
| LADD Petroleum, Natl Gas Dept. (Wkrs) | Denver, CO | 03/04/91 | 02/25/91 | 25,506 | Petroleum. |
| Lucky Lynn (Wkrs) | Salley, SC | 03/04/91 | 02/01/91 | 25,507 | Outerwear. |
| Megastar Apparel Group (Wkrs) | Chester, SC | 03/04/91 | 01/31/91 | 25,508 | Shirts. |
| Method Plastics (Wkrs) | Baltimore, MD | 03/04/91 | 02/21/91 | 25,509 | Automobiles. |
| Modine Heat Transfer, Inc. (UAW) | Dowagiac, MI | 03/04/91 | 02/18/91 | 25,510 | Heating Units. |
| P.P.G. Industries Inc. (ABGWU) | Crystal City, MO | 03/04/91 | 12/14/91 | 25,511 | Glass. |
| Phillips Industries, Inc. (Wkrs) | McKinney, TX | 03/04/91 | 02/20/91 | 25,512 | Auto Wheels. |
| Rowe International, Inc. (Wkrs) | Whippany, NJ | 03/04/91 | 02/19/91 | 25,513 | Wire Harnesses. |
| Salley Mfg Co. (Wkrs) | Salley, SC | 03/04/91 | 02/01/91 | 25,514 | Outerwear. |
| Sebewaing Industries, Inc. (Wkrs) | Sebewaing, MI | 03/04/91 | 02/21/91 | 25,515 | Metal Stamping. |
| Thomas & Betts Corp. Connectors (Wkrs) | Bridgewater, NJ | 03/04/91 | 02/14/91 | 25,516 | Electric. |
| Western Atlas Intl./Atlas Wireline (Wkrs) | St. Albans, WV | 03/04/91 | 02/18/91 | 25,517 | Oil & Gas. |
| Work Wear Corp. (Wkrs) | Asheville, NC | 03/04/91 | 01/21/91 | 25,518 | Disposable Prod. |

[FR Doc. 91-6213 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,203]

**International Shoe Machine Corp.
Kingston, PA; Dismissal of Application
for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at International Shoe Machine Corporation, Kingston, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,203; International Shoe Machine Corporation Kingston, Pennsylvania (March 7, 1990).

Signed at Washington, DC this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6210 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,041]

**Lewistown Specialty Yarns, Inc.
Lewistown, PA; Negative
Determination Regarding Application
for Reconsideration**

By an application dated February 20, 1991, Local #6 of the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 23, 1991 and published in the **Federal Register** on February 26, 1991 (56 FR 7065).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union stated that imports of apparel and other articles made from polyester yarn adversely affected sales

or production and employment at Lewistown Specialty Yarns.

The Department's denial was based on the fact that the increased import criterion of the Trade Act was not met. U.S. imports of yarn decreased absolutely and relative to U.S. shipments in 1989 compared to 1988 and decreased absolutely in the January to June period of 1990 compared to the same period in 1989.

Further, the "contributed importantly" test of the Group Eligibility Requirements of the Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the major customers of Lewistown Specialty shows that they did not import yarn during 1988, 1989 or 1990.

The issue of components (yarn) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of apparel and other articles made from yarn cannot be considered in determining import injury to workers producing yarn. Therefore, in determining import injury to workers at

Lewistown, the Department must consider imports of yarn not apparel.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of March 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-6211 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,423]

NEC (New Energy Corp.); a/k/a Pedco; Cushing, OK; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 28, 1990 applicable to all workers of NEC (New Energy Corporation, Cushing, Oklahoma). The Certification Notice was published in the *Federal Register* on July 12, 1990 (55 FR 28699).

New information shows that PEDCO and NEC had the same ownership, employed the same workforce while drilling for crude oil for others in the period applicable to the petition. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-24,423 is hereby issued as follows:

All workers of NEC (New Energy Corporation) also known as (a/k/a) PEDCO, Cushing, Oklahoma who became totally or partially separated from employment on or after April 24, 1989, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6208 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,185 Serac Inc., Sandpoint, ID, TA-W-25,185A Panhandle Knits, Priest River, ID and TA-W-24,185B Riverbend Manufacturing, Priest River, ID]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 8, 1991 applicable to all workers of Serac Manufacturing, Inc., Priest River, Idaho. The notice will soon be published in the *Federal Register*.

Based on new information from the company, the Department is correcting the worker group to reflect the correct name of the parent company and include two affiliates of Serac, Inc., which produced skiwear and occupied the same building in Priest River, Idaho. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-25,185 is hereby issued as follows:

All workers of Serac, Inc., Sandpoint, Idaho Panhandle Knits, Priest River, Idaho and River-Bend Manufacturing, Priest River, Idaho who became totally or partially separated from employment on or after November 23, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6209 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,106]

Teledyne Monarch Rubber Division of Teledyne Industries-Hartville, OH; Negative Determination Regarding Application for Reconsideration

By an application dated March 1, 1991, Local #99 of the United Rubber Workers (URW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 31, 1991 and published in the *Federal Register* on February 26, 1991 (56 FR 7065).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Molded rubber automotive components accounted for the predominant portion of production and sales at Teledyne Monarch Rubber. The plant also produced industrial tires and ordnance. Workers are not separately identifiable by product.

The union claimed that increased imports of automobiles and automobile parts together with the growing number of foreign-owned auto plants in the U.S. has had an adverse impact on the Teledyne plant.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major customers purchasing molded rubber auto parts showed that the customers did not import components similar to those purchased from Teledyne or relied on imports for a very small proportion of their total needs. The surveyed customers indicated that they do not plan to replace Teledyne's products with foreign-made components.

The issue of components (molded rubber auto parts) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F.2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of automobiles cannot be considered in determining import injury to workers producing molded rubber auto parts, components of automobiles. Therefore, in determining import injury to workers at Teledyne Monarch Rubber, the Department must consider the article produced at Teledyne Monarch Rubber—molded rubber auto parts.

Investigation findings also show that the production and sales of industrial tires increased in 1989 and 1990 compared to the immediately preceding year. Further, foreign ownership of domestic plants would not form a basis for a certification.

Conclusion

After review of the application and investigative findings, I conclude that

there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of March 1991.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial
Services, UIS Unemployment Insurance
Service.

[FR Doc. 91-6212 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8536, et al.]

Proposed Exemptions; Manufacturers Hanover Co. (MHC), et al.

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW.,

Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or § 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Manufacturers Hanover Company (MHC) Located in New York, New York

[Application No. D-8536]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a

trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan; (ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

certificates representing an interest in a trust containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.³

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise

apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's) Moody's Investors Service Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and

Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the cases of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(b) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which MHC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) MHC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with MHC; or

(3) Any member of an underwriting syndicate or selling group of which MHC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, as trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in

the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

- (1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
- (2) The servicer may not charge the fee absent the act or failure to act referred to in (1);
- (3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
- (4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

- (a) Which is secured by equipment which is leased;
- (b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and
- (c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

- (a) The trust holds a security interest in the lease;
- (b) The trust holds a security interest in the leased motor vehicle; and
- (c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. MHC is a bank holding company which was organized under the laws of the State of Delaware in 1968. On April 28, 1969, MHC acquired all the outstanding capital stock of Manufacturers Hanover Trust Company (MHT), a banking corporation organized under banking laws of the State of New

York. The principal executive offices of MHC and MHT are located at 270 Park Avenue, New York, New York 10017.

MHT is engaged in a general commercial banking and trust business and provides a wide variety of fiduciary, investment management, investment banking, advisory, corporate agency, corporate trust and personal trust and estate services both domestically and abroad. Measured by total deposits at December 31, 1987, MHT was the third largest bank headquartered in New York and the fourth largest in the United States.

MHC is a legal entity separate and distinct from its bank and nonbank subsidiaries. MHC's principal asset and primary source of income is its investment in MHT.

Although MHT is its principal subsidiary, MHC has investments in other companies which make available a variety of banking and related financial services. MHC owns one other bank subsidiary, Manufacturers Hanover Bank (Delaware). MHC also has an ownership interest in The C.I.T. Group Holdings, Inc. (CIT), formerly C.I.T. Financial Corporation. CIT directly, or through its subsidiaries, engages principally in equipment financing, corporate financing, factoring, commercial financing and sales financing. Through its various other subsidiaries, MHC is engaged in trust services, investment banking, venture capital and investment advisory services.

MHC and its affiliates conduct a worldwide financial services business that includes commercial banking and merchant banking, in the course of which a wide range of securities underwriting and dealing activities are conducted. In particular, in the United States, MHC underwrites and trades mortgage loans and other loans and MHC underwrites and trades mortgage-backed and other asset-backed securities and provides related investment banking and financial advisory services.

MHC represents that it and its subsidiaries have received authority from the Board of Governors of the Federal Reserve System (the FRB) to underwrite and deal in single and multi-family (1-4 family) residential mortgage investment trusts, motor vehicle receivable investment trusts, consumer receivable investment trusts and governmental mortgage pool certificate investment trusts as per two separate approvals dated May, 1987 (73 Fed. Res. Bull. at 621) and July, 1987 (73 Fed. Res. Bull. at 734). The applicant further represents that on June 11, 1990, the FRB granted its approval for MHC to engage

in the private placement of all types of securities, including residential investment trusts in excess of 4 families, commercial mortgage investment trusts and commercial receivable trusts (76 Fed. Res. Bull. at 674).

Trust Assets

2. MHC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.⁵

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a

⁴ The Department notes that PTE 83-1 (46 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. MHC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

⁵ Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates, because the certificates in the trusts are plan assets.

trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, by an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. MHC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, MHC may act either as agent or principal. MHC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

MHC represents that when payments are made on this basis, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities that meet rating criteria consistent with the rating of the certificates. In some cases, the servicer may be permitted to make a single deposit in the account once a month. When the servicer makes such monthly deposits, the funds received by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases when distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to

the rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates: "Strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on mortgages is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.⁶

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate which is eligible for the exemption be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis.⁷

⁶ It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

⁷ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of 30-year obligations in which case the period may be as long as two years). MHC represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty or representations regarding the assets in a trust. Any obligation so substituted is required to have characteristics substantially similar to those of the original obligation.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be businesses experienced in the origination of receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a *trust sponsor* are typically limited to depositing receivables in a trust in exchange for certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

9. The *trustee* of a trust is the legal owner of the receivables in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to MHC, the trust sponsor or the servicer. MHC represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer,

sponsor, or the trust as specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to MHC. In some cases, however, affiliates of MHC may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. However, in some cases, the sponsor will purchase the receivables from other sources in the secondary market.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters, or may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the

trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale of the certificates to pay the originator for the receivables sold to the trust.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.⁸ This rate is generally determined by the same market forces that determine the price of a certificate. There is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificateholders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. In some transactions the "credit support fee" is

⁸ The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

paid in a lump sum at the time the trust is established.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be sent forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or commingled with the servicer's own funds, the servicer will be required to make deposits attributable to such payments by a date specified in the pooling and servicing agreement into an account from which payment are made to certificateholders.

16. MHC will receive a fee in exchange for its services in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what MHC receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

For some public offerings, MHC may sell certificates on an agency basis in a best efforts underwriting. In these cases, MHC would receive an agency commission. In some private placements MHC may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of the receivables will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, reserve funds, cash flow subordination or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for obligations of the type included in the issuing trust.

Provisions of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer will first advance funds in a timely manner to cover any defaulted payments to the extent that it expects to recover those moneys out of future payments, or the master servicer, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism. However, in some cases the master servicer may not be obligated to advance funds, but instead will be

called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, the master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

If the master servicer fails to advance funds or fails to call upon the credit support mechanism to provide funds to cover defaulted payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When the master servicer advances funds, the amounts so advanced are recoverable by the servicer from the provider of credit support or out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's

supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) In cases where the master servicer and the insurer are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information pertinent to a plan's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any risk factors with respect to the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) A full description of all material provisions of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the trust.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the master servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form 8-K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the rating agency or agencies that have rated the trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date,

certificateholders will receive a statement summarizing information regarding the trust and its assets, including underlying obligations.

Secondary Market Transactions

24. MHC normally attempts to make a market for securities for which it is lead or co-managing underwriter. It is also MHC's policy to facilitate sales by investors who purchase certificates if MHC has acted as agent or principal in the original placement of the certificates and if such investors request MHC's assistance.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested to satisfy the statutory criteria of section 406(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which MHC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) MHC has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83-1

The exemptive relief proposed herein is similar to that provided in PTE 81-7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83-1 (48 FR 895, January 7, 1983).

PTE 83-1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 of the Act for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of

the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83-1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83-1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83-1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83-1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.⁹

III. Limited Section 406(b) and Section 407(a) Relief for Sales

MHC represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.¹⁰ In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.¹¹

⁹ In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

¹⁰ In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which MHC or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

¹¹ The applicant represents that where a trust sponsor is an affiliate of MHC, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to the purchases and sales of securities by broker-dealers and their affiliates), if MHC is not a fiduciary with respect to plan assets to be invested in certificates.

Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, MHC represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. MHC represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, MHC represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons:

Since all potentially interested persons cannot practically be identified, it has been determined that publication of this notice of proposed exemption in the Federal Register shall serve as notification to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Kay Madsen of the Department telephone (202) 523-8971. (This is not a toll-free number.)

Citicorp Real Estate Inc. (Citicorp) and Bankers Trust Company (BT); Located in New York, New York

[Application No. D-8372]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the proposed granting to Citicorp and BT, as representatives of

lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in Trammel Crow Equity Partners II, Ltd. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by Citicorp in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of Citicorp are made by a fiduciary which is not included among, and is independent of, the Lenders, BT and Citicorp.

Summary of Facts and Representations

1. The Partnership is a Texas limited partnership, the general partner of which is Trammel Crow Ventures #2, Ltd. (the General Partner), which is also a Texas limited partnership. The Partnership is organized under an agreement (the Agreement) dated September 15, 1988 for a term expiring December 31, 1998, subject to extension by the General Partner to a date not later than December 31, 2000. The Partnership's stated purpose is to invest in undervalued commercial real estate assets, including leveraged equity investments, in order to benefit from long-term capital appreciation by acquiring institutional quality properties on favorable terms, leveraging prudently to optimize returns, and intensively managing and leasing the portfolio of acquired properties. Proceeds from the sale or refinancing of properties generally will not be reinvested but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

After execution of the Agreement, the General Partner sought capital commitments from a limited number of investors through private placement and has obtained, as a result, irrevocable, unconditional capital commitments totalling \$539,527,368 from thirteen purchasers of limited partnership units in the Partnership (the Limited Partners). Five percent of the total capital commitments to the Partnership are provided by the General Partner. The Limited Partners made initial capital contributions on the closing date of the Partnership and the balances of their capital commitments are due and payable upon call of the General

Partner. Each Limited Partner's commitment to contribute capital upon the General Partner's call is secured by a grant to the Partnership of a security interest in the Limited Partner's rights and interests in the Partnership.

2. In the ordinary course of its business operations the Partnership will incur substantial indebtedness in connection with many of its investments. This ongoing need for credit will be provided by the Facility, a three-year arrangement for \$400 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by Citicorp and BT, who are also participating Lenders, and Citicorp serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures December 22, 1992 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's capital call rights and the Partnership's security interests in each Limited Partner's partnership interests. As additional security the Facility requires each Limited Partner to execute an agreement (the Security Agreement) granting to Citicorp, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interests, and covenanting with Citicorp, for the benefit of the Lenders, as honor unconditionally any capital calls made by Citicorp in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

3. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders are parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. Citicorp and BT are requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and other Limited Partners and the extent of their respective investments in and commitments to the Partnership are described as follows:

(a) The General Motors Hourly-Rate Employees Pension Plan, a defined benefit plan with approximately 644,607 participants, and the General Motors Retirement Program for Salaried Employees, a defined benefit plan with

212,139 participants (together, the GM Plans); The GM Plans maintain the First Plaza Group Trust (the FP Trust), the sole purpose of which is to hold all assets of the GM Plans. The trustee of the FP Trust is the Mellon Bank, N.A. The FP Trust has invested in 150 units of limited partnership interest in the Partnership (the Units), constituting approximately 29.2 percent of the Units, and has undertaken a total capital commitment of \$150 million to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership is the finance committee of the board of directors of General Motors, the sponsor of the GM Plans.

(b) The Cummins Engine Company, Inc. and Affiliates Retirement Trust (the Cummins Trust), Northern Trust Company, trustee: This trust holds assets of five defined contribution and defined benefit plans sponsored by Cummins Engine Company and its affiliates on behalf of approximately 22,500 participants. The Plans in the Cummins Trust are the Cummins Retirement Trust, the Cummins Deferred Income Trust, the Onan Retirement Savings Plan, the Onan Profit Sharing Plan and the Onan Pension Plan. The fiduciary responsible for authorizing and overseeing the Cummins Trust's investment in the Partnership is Reams Asset Management Company. The Cummins Trust has invested in 20 Units, constituting approximately 3.9 percent of the Units, and has undertaken a total capital commitment of \$20 million.

(c) The DuPont Pension Fund (the Dupont Trust), Wilmington Trust Company, trustee: This trust holds assets of five defined benefit plans maintained by DuPont Corporation and its affiliates on behalf of approximately 100,179 participants. The DuPont Trust consists of the DuPont Pension and Retirement Plan, the DuPont Agrichemicals Caribe, Inc. Pension and Retirement Plan, the Conoco, Inc. Pension and Retirement Plan. The fiduciary responsible for authorizing and overseeing the DuPont Trust's investment in the Partnership is an officer of the DuPont Corporation, the Vice-President for Pension Fund Investment. The DuPont Trust has invested in 30 Units, constituting approximately 5.85 percent of the Units, and has undertaken a total capital commitment of \$30 million.¹²

¹² The Limited Partners also include the Ameritech Pension Plan and the Ameritech Management Pension Plan (the Ameritech Plans), which are defined benefit pension plans sponsored by the American Information Technologies Corporation (Ameritech). Ameritech has requested

(d) Limited Partners which are not ERISA-covered plans:

1. Los Angeles County Employees Retirement Association has invested in 25 Units and has undertaken a total capital commitment of \$25 million.

2. The Minnesota Mutual Life Insurance Company has invested in 10 Units and has undertaken a total capital commitment of \$10 million.

3. NLI Properties, Inc. has invested in 50 Units and has undertaken a total capital commitment of \$50 million.

4. The PB-SB 1988 Investment Partnership VIII has invested in 2,551 Units and has undertaken a total capital commitment of \$2,551,000.

5. The Southern Farm Bureau Life Insurance Company has invested in 15 Units and has undertaken a total capital commitment of \$15 million.

6. The State of Michigan Pension Plans have invested in 150 Units and have undertaken a total capital commitment of \$150 million.

7. The Taisho Realty America Corporation has invested in 10 Units and has undertaken a total capital commitment of \$10 million.

8. Tokio Marine Realty Co., Ltd. has invested in 20 Units and has undertaken a total capital commitment of \$20 million.

9. The Western and Southern Life Insurance Company has invested in 5 Units and has undertaken a total capital commitment of \$5 million.

4. Citicorp and BT represent that the Partnership has obtained an opinion of counsel that the Partnership will constitute an "operating company" under the Department's plan asset regulations (29 CFR 2510.3-101(c)) if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.¹³

Citicorp and BT represent that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. They also

that the Ameritech Plans not be included in the exemption requested by the Citicorp and BT, proposed herein. Ameritech represents that the transactions which are the subject of the exemption proposed herein are covered, with respect to the Ameritech Plans, by an exemption application, No. D-8094, previously filed by Ameritech and currently under consideration by the Department.

¹³ The Department expresses no opinion as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3-101.

represent that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. Citicorp and BT represent that all aspects of the operation of the Facility other than the proposed Security Agreements will be handled exclusively by Citicorp on behalf of the Lenders and by the General Partner on behalf of the Partnership and that the Security Agreements will constitute the sole direct relationship between the Limited Partners, as such, and the Lenders for the duration of the Facility. Citicorp and BT represent that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The Only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as limited partners to respond to capital calls up to the total amount of each Plan's capital commitment to the Partnership.

5. Citicorp represents that neither it nor any Leader acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that Citicorp is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by any of the Lenders. The Trust Fiduciaries represent that the Trusts' investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor capital calls made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to Citicorp, BT and the Lenders and that the investment in the Partnership by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

6. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with knowledge that the Security Agreements are required of all limited partners investing in the Partnership.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of March, 1991.

Ivan Strassfeld,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 6268 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-26)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on The Use of Space Station Freedom For In-Space Technology Development and Engineering Research.

DATES: April 16, 1991, 9 a.m. to 5 p.m.; April 17, 1991, 9 a.m. to 5 p.m.; and April 18, 1991, 9 a.m. to 12:15 p.m.

ADDRESSES: Auburn University, Space Power Institute, 231 Leach Center, room 243, Auburn, AL 36849-5320.

FOR FURTHER INFORMATION CONTACT: Dr. Judith H. Ambrus, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2848.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on The Use of Space Station Freedom For In-Space

Technology Development and Engineering Research, chaired by Dr. M. Frank Rose, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

April 16, 1991

- 9 a.m.—Opening Remarks.
- 9:15 a.m.—Review of Minutes of February Meeting.
- 9:30 a.m.—Space Station Freedom User Operations Planning—Overview.
- 11 a.m.—Power, Fluid Management, Fire Safety.
- 1 p.m.—Materials Technology.
- 1:45 p.m.—Manned Observation.
- 2:30 p.m.—Life Support.
- 3:15 p.m.—Space Station Freedom Utilization as an Experimental Spacecraft.
- 4 p.m.—Robotics.
- 5 p.m.—Adjourn.

April 17, 1991

- 9 a.m.—Discussion and Preparation of Draft Report.
- 5 p.m.—Adjourn.

April 18, 1991

- 9 a.m.—Discussion and Preparation of Draft Report.
- 12:15 p.m.—Adjourn.

Dated: March 11, 1991.

John W. Gaff,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 91-6224 Filed 3-14-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting: Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Projects: New Forms I Section) to the National Council on the Arts will be held on April 1-4, 1991 from 9 a.m.-7 p.m. and April 5 from 9:00 a.m.-3:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on April 1 from 9 a.m.-10 a.m. and April 5 from 1:45 p.m.-3:30 p.m. The topics will be welcoming remarks, instructions to the panelists, and policy discussion.

The remaining portions of this meeting on April 1 from 10 a.m.-7 p.m., April 2-4

from 9 a.m.-7:00 p.m. and April 5 from 9 a.m.-1:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with the guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

*Acting Director, Council and Panel
Operations, National Endowment for the Arts.*

[FR Doc. 91-6205 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting: Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies "A" Section) to the National Council on the Arts will be held on April 1, 1991 from 9:30 a.m.-8:30 p.m. and April 2-3 from 9:30 a.m.-9:30 p.m. in room M-07 at the Nancy Hanks Center,

1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 1 from 9:30 a.m.-11 a.m. The topics will be opening remarks, panelist review criteria, and a review of issues from the March 4, 1991 planning meeting.

The remaining portions of this meeting on April 1 from 11 a.m.-8:30 p.m. and April 2-3 from 9:30 a.m.-9:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

*Acting Director, Council and Panel
Operations, National Endowment for the Arts.*

[FR Doc. 91-6206 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Amended Notice of Meeting; Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 4, 1991 from 9 a.m.—5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.—10 a.m. The topics will be opening remarks/general discussion.

The remaining portion of this meeting from 10 a.m.—5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-6203 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies "B" Section) to the National Council on the Arts will be held on April 4, 1991 from 9:30 a.m.—8:30 p.m. and April 5-6 from 9:30 a.m.—9:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 4 from 9:30 a.m.—11 a.m. The topics will be opening remarks, panelist review criteria, and a review of issues from the March 4, 1991 planning meeting.

The remaining portions of this meeting on April 4 from 11 a.m.—8:30 p.m. and April 5-6 from 9:30 a.m. to 9:30 p.m. are for the purpose of Panel review, discussions, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portion thereof, of advisory panels which are open to the public. Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-6204 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Challenge/Advancement Advisory Board

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Challenge III Overview Section) to the National Council on the Arts will be held on April 3-4, 1991, from 9 a.m.—5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductory remarks, the future direction of the Challenge III program, and administrative issues.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts,

Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,
Acting Director, Council and Panel
Operations, National Endowment for the Arts.
[FR Doc. 91-6147 Filed 3-14-91; 8:45 am]
BILLING CODE 7537-01-M

Meeting; Expansion Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on April 2, 1991, from 9:15 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductions and program update, guideline review with special consideration of the arts education initiative, multi-year funding, reauthorization summary and the five percent set-aside, update on NEA Working Groups, trends and observations, and closing remarks.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,
Acting Director, Council and Panel
Operations, National Endowment for the Arts.
[FR Doc. 91-6148 Filed 3-14-91; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: The National Commission of Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATE: March 20, 1991, 8:30 a.m. to 3:30 p.m.

ADDRESS: Capitol Hill Hotel, Capitol Hill Room, 200 C Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Jeff Lawrence, Assistant to the Co-Chairman. The National Commission on Severely Distressed Public Housing, 2301 Rayburn Building, Washington, DC 20515 (202) 225-2436.

Type of Meeting: Open.

Agenda: Further presentations from interest groups. Discussion of prior HUD reports on public housing. Hiring of Executive Director. Consideration of Site Visits.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by the Federal Advisory Committee Act.

Bill Green,
Co-Chair.

[FR Doc. 91-6199 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-04-M

NATIONAL SCIENCE FOUNDATION

Biological and Behavioral Sciences; Panel for Biological Instrumentation Facilities; Meeting

Name: Advisory Panel Meeting for Biological Instrumentation Facilities.

Date, Time, and Place: Friday April 5, 1991 from 2-6 Saturday, April 6, 1991 from 8:30-12 noon, Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Type of meeting: Closed.

Contact person: Dr. Robley Light, Program Director of Biological Instrumentation Facilities, Room 312, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for Instrumentation equipment.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 11, 1991.

Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91-6126 Filed 3-14-91; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel on Biotechnology Opportunities at NSF; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel on Biotechnology Opportunities at NSF.

Date and time: Tuesday, April 2, 1991, 8:30 a.m.-5:30 p.m.

Place: American Institute of Architects, (AIA) Building, 1735 New York Avenue, NW., Washington, DC.

Type of meeting: Open.

Contact person:

Bruce L. Umminger, Director, Division of Cellular Biosciences, room 321-B, National Science Foundation, (202) 357-7905.

Minutes: May be obtained from contract person listed above after approval by the Chairman.

Purpose of meeting: To review and discuss MRW report entitled *Biotechnology Opportunities: The NSF Role*.

Agenda:

- Critique the NSF report for its accuracy and Completeness.
- Assist NSF in clarifying its role in the support of biotechnology.
- Advise on the seven major areas of biotechnology application and the mechanisms for support identified in the report.

- Draft a Panel Report.

Dated: March 11, 1991.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91-6127 Filed 3-14-91; 8:45 am]
BILLING CODE 7555-01-M

Division of Computer and Computation Research; Special Emphasis Panel

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Computer and Computation Research.

Dates: April 2 and 3, 1991.

Time: 8:30 a.m.—5 p.m. each day.

Place: Room 304, National Science Foundation, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Research Initiation Awards proposals.

Contact: Dr. Bruce H. Barnes, Deputy Division Director, Computer and Computation Research, National Science Foundation, Rm. 304, Washington, DC 20550 (202-357-8747).

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6128 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

Panel for Instrumentation and Instrumentation Development; for the Biological and Behavioral Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel Meeting for Instrumentation and Instrument Development.

Date, Time, and Place: Thursday April 4, 1991 from 9-6 Friday, April 5, 1991 from 8:30-12 noon Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Type of meeting: Closed.

Contact person: Dr. Robley Light, Program Director of Instrumentation and Instrument Development, room 312, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for instrumentation equipment.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: March 11, 1991.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6129 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mathematical Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

NATIONAL SCIENCE FOUNDATION

| Committee name | Agenda | Room* | Date(s) | Times |
|--|--|-------|----------------------|--|
| Special Emphasis Panel in Mathematical Sciences..... | Research Opportunities for Women in Mathematical Sciences. | 523 | 04/04/91 04/05/91 | 8:30 a.m. to 5 p.m. 8:30 a.m. to 5 p.m. |

* At 1800 G Street NW., Washington, DC.

[FR Doc. 91-6130 Filed 3-14-91; 8:45am]

BILLING CODE 7555-01-M

Advisory Panel for Physical Anthropology; Meeting Closed

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Physical Anthropology.

Date and Time: April 2, 1991, 9 a.m.—5 p.m.

Place: University of Wisconsin-Milwaukee, Department of Anthropology, Milwaukee, WI 53201.

Type of Meeting: Closed.

Contact Person: Dr. Mark L. Weiss, Program Director, Physical Anthropology, room 320, National Science Foundation,

Washington, DC 20550, Telephone (202) 357-7804.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6131 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Physiological Processes.

Date, Time, and Place: April 1-4, 1991, 8:30 a.m. to 5 p.m., room 1243, National Science

Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting:

Part Open—April 2, 12 p.m.–1 p.m. (open)

April 3, 4 p.m. (open)

All other times the meeting is closed.

Contact Person: Dr. Ronald Alvarado, Program Director, Physiological Processes, room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7975.

Purpose of Advisory Panel: To provide advice and recommendations relative to research in Physiological Processes.

Agenda:

Open—General discussion of the current status and future plans of the Physiological Processes Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6132 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket No. 30-30691-CivP E.A. 90-102, ASLBP No. 91-636-03-CivP]

Barnett Industrial X-Ray (Materials License No. 35-26953-01); Hearing and Prehearing Conference

March 8, 1991.

Notice is hereby given that, by Memorandum and Order dated March 8, 1991, the Atomic Safety and Licensing Board has granted the request of Barnett Industrial X-Ray (Licensee) for an enforcement hearing in the above-titled proceeding. The hearing concerns the Order Imposing a Civil Monetary Penalty, issued by the NRC Staff on December 31, 1990 (published as 56 F.R. 901, January 9, 1991).

The parties to the proceeding are the Licensee and the NRC Staff. The issues to be considered at the hearing are (a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation 1.B of the Notice of Violation and Proposed Imposition of Civil Penalty, dated September 7, 1990, and specifically whether the radiographer referenced therein received a whole body dose in excess of

three rems; and (b) whether, on the basis of this violation and the violations admitted by the Licensee, the Order Imposing a Civil Monetary Penalty should be sustained.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. Notice is hereby given that the initial prehearing conference is scheduled for Tuesday, April 9, 1991, beginning at 9:30 a.m., at the Payne County Courthouse, 606 South Husband, 3rd floor, Stillwater, Oklahoma 74074. Members of the public are invited to attend this conference, as well as other prehearing conference or evidentiary hearing sessions that may be held.

In accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either orally or in writing, setting forth his or her position on the issues. The Licensing Board will entertain oral statements at the outset of the prehearing conference on April 9, 1991. Limited appearance statements do not constitute testimony or evidence in this proceeding, and the persons making such statements may not participate in any other way. The number or persons making oral statements and the time allocated for each statement may be limited depending on the number of persons present at the designated time. Written statements may be presented at any time. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Region IV Office, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011.

Bethesda, Maryland, March 8, 1991.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 91-6201 Filed 3-14-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-5056. License No. SOP-2899-7]

G. A. Zimmerman; Order Suspending License (Effective Immediately) and Order To Show Cause

I

Mr. G. A. Zimmerman (Licensee) is the holder of Senior Operator License No. SOP-2899-7 (License) issued by the Nuclear Regulatory Commission (NRC/Commission) on March 7, 1977, pursuant to 10 CFR part 55. He is employed by the American Electric Power Company (facility licensee) and is authorized to manipulate and direct the manipulation of the controls of the reactors at the D.C. Cook Plant, Units 1 and 2 (facility). The License was last renewed February 13, 1989 and is due to expire on March 7, 1995.

II

The NRC licenses individuals pursuant to 10 CFR part 55, Operators' Licenses, to manipulate reactor controls and to direct those who manipulate the reactor controls. The operator license requires the individual to observe the operating procedures and other conditions specified in the facility license.

In accordance with 10 CFR 55.53(h) the Licensee shall complete a requalification program as described by 10 CFR 55.59. This section requires that the Licensee successfully complete a requalification program developed by the facility licensee and pass a comprehensive requalification written examination and annual operating test. In addition, 10 CFR 55.57(b)(iv) requires that, prior to renewal of a license, a Licensee pass a comprehensive requalification written examination and operating test administered by the Commission. The objective of the Licensee's successful completion of the facility licensee's requalification program and successful completion of examinations administered by the NRC and the facility licensee is to assure continued proficiency of the Licensee in the performance of his licensed duties.

The Licensee failed to pass portions of the comprehensive requalification operating test administered to him by the NRC on three separate occasions since December, 1989, despite his attendance at NRC-required remediation training following each of his first two failures. NRC examinations are administered in accordance with 10 CFR 55.41, 55.43 and 55.45 to determine whether the Licensee continues to maintain the knowledge and ability to perform his licensed duties adequately.

Specifically, during the NRC-administered operating test on December 16, 1989, the following performance deficiencies were observed:

Pursuant to 10 CFR 55.45(a)(5), the Licensee must demonstrate the ability to observe and safely control the operating behavior characteristics of the facility. Acting as the Unit Supervisor, the Licensee was made aware of conditions leading to overpressurization of the reactor coolant system but did not direct the corrective actions to prevent lifting of the primary code safety valves. The Licensee incorrectly performed the actions required by the facility Emergency Operating Procedures (ES-1.1 and FR-S.1).

Pursuant to 10 CFR 55.45(a)(7), the Licensee must demonstrate the ability to safely operate the facility's heat removal systems, including primary coolant, emergency coolant, and decay heat removal systems, and identify the relation of the proper operation of these systems to the operation of the facility. As the Unit Supervisor, the Licensee incorrectly ordered the closure of all main steam isolation valves during events that did not require this action, thereby unnecessarily removing the reactor's normal means of heat removal. The Licensee incorrectly performed the actions required by the facility functional recovery procedure (FR-S.1).

The Licensee was notified by the NRC of this simulator operating test failure by letter dated January 5, 1990. The facility licensee administered remedial training to the Licensee in accordance with its requalification program for a period of 4 days subsequent to the first failure.

During the NRC-administered operating test on June 27, 1990, the following performance deficiencies were observed:

In accordance with 10 CFR 55.45(a)(8), the Licensee is required to demonstrate the ability to safely operate the facility's auxiliary and emergency systems, including operation of those controls associated with plant equipment that could affect reactivity. The Licensee, as Unit Supervisor, directed the reactor operator to use a normal boration flowpath even though reactor conditions and facility procedural guidance (02-OHP 4022.005.002, Emergency Boration) required emergency boration via a more expedient boration flowpath that was available at the time. The Licensee incorrectly performed the actions required by the facility Emergency Boration Procedure (02-OHP 4022.005.002).

In accordance with 10 CFR 55.45(a)(13), the Licensee is required to demonstrate the ability to function within the control room team as appropriate to the assigned position in such a way that the facility licensee's procedures are adhered to and that the limitations in its license and amendments are not violated. As the Unit Supervisor, the Licensee made errors in the application of facility emergency operating procedures. Specifically, the Licensee incorrectly used ES 0.0, "Rediagnosis Procedure," when entry

conditions for this procedure did not exist. In addition, the Licensee failed to implement the procedure steps for establishing an alternate flowpath for letdown during the use of ES 0.1, "Reactor Trip Recovery Procedure." The Licensee performed inappropriate and ineffective transitions into and out of the facility's emergency operating procedures (ES 0.0 and 0.1) dealing with a loss of heat sink and faulted steam generator thereby delaying a recovery from existing accident conditions. During this simulator test, the Licensee also incorrectly applied the facility Technical Specifications (T.S.) associated with inoperable safeguards equipment such that the less conservative requirements were implemented. Specifically, the Licensee took the action required by the facility's T.S. for T.S.3.03 when the correct action to be taken was the action required by T.S.3.05. The Licensee incorrectly performed the actions required by the facility emergency operating procedures (ES 0.0 and ES 0.1) and the facility Technical Specifications.

The Licensee was notified by the NRC of this simulator operating test failure by letter dated January 24, 1991. The facility licensee administered remedial training to the Licensee in accordance with its requalification program for a period of 5 days subsequent to the second failure.

Following the last remediation training, the Licensee was administered a third comprehensive operating test by the NRC on February 5 and 6, 1991. The Licensee failed the individual walk-through portion of the operating test that requires completion of facility-developed job performance measures. The following deficiencies were noted:

Pursuant to 10 CFR 55.45(a)(7), the Licensee must demonstrate the ability to safely operate emergency coolant systems. During the performance of the procedure ES 1.3, "Transfer to Cold Leg Recirculation," the Licensee failed to complete a critical step. Specifically, the Licensee failed to close the safety injection pump suction from the refueling water storage tank to allow suction from the residual heat removal pump discharge. The Licensee incorrectly performed the actions required by the facility operating procedure ES 1.3.

Pursuant to 10 CFR 55.45(a)(8), the Licensee must demonstrate the ability to safely operate those controls associated with plant equipment that could affect reactivity. The Licensee was demonstrating the performance of the facility procedure FR-S.1, "Response to Nuclear Power Generation/ATWS," during which he failed to ensure that control rod insertion occurred at the maximum rate possible under the existing conditions, as required, and failed to align the boron injection tank valves in the procedurally prescribed sequence. The Licensee incorrectly performed the actions required by the facility operating procedure.

Pursuant to 10 CFR 55.45(a)(12), the Licensee must demonstrate knowledge and ability, as appropriate to the assigned position, to assume the responsibilities associated with the safe operation of the facility. During the performance of a facility

surveillance test, a Technical Specification determination of shutdown margin was required. The Licensee used incorrect data, obtained by him through improper usage of a reference material, which resulted in the incorrect determination of reactor shutdown margin. The Licensee incorrectly determined the reactor shutdown margin as required by the facility Technical Specifications.

III

The responsibilities associated with a Senior Reactor Operator License issued pursuant to 10 CFR part 55 are significant with respect to the protection of public health and safety. Repeated errors made by the Licensee in the implementation of procedures related to accident mitigation resulting in plant degradation or recovery delays, as well as errors in system operation related to reactivity and heat removal, are significant deficiencies that indicate unacceptable performance due to the potential impact on public health and safety. Licensed operators must maintain a high degree of proficiency such that significant errors of the type described above will not be likely to occur under actual conditions. The Licensee failed to demonstrate an acceptable level of performance on three consecutive occasions. Remediation of the Licensee by the facility licensee has been unsuccessful and the Licensee can no longer be relied upon to conduct licensed activities safely. These repeated failures also demonstrate a failure by the Licensee to successfully complete the facility licensee's requalification program as required by 10 CFR 55.53(h). Consequently, I lack the requisite reasonable assurance that the Licensee can perform duties under License No. SOP 2899-7 in compliance with the Commission's requirements and that the health and safety of the public will be protected. Therefore, the public health, safety, and interest require that License No. SOP 2899-7 be suspended. Further, pursuant to 10 CFR 2.204(c), I find that the public health, safety, and interest require that this Order be immediately effective and that no prior notice is required.

IV

Accordingly, pursuant to sections 107, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 55, it is hereby ordered, effective immediately, that license no. SOP-2899-7 is suspended.

The Regional Administrator, Region III, may, in writing, relax or rescind this Order upon demonstration by the Licensee of good cause.

V

Further, pursuant to sections 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 55, *it is further ordered* that the Licensee shall show cause why License No. SOP-2899-7 should not be revoked and why it should not have been suspended.

Pursuant to 10 CFR 2.202(b), the Licensee shall show cause why his License should not be revoked by filing a written answer under oath or affirmation within 20 days after the date of issuance of this Order within 20 days of the date of this Order. The Licensee may answer this Order, setting forth the matters of fact and law on which the Licensee relies. Any other person adversely affected by this Order may submit an answer to this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order revoking his License. Any answer to this Order shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

VI

The Licensee or any other person adversely affected by this Order may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission ATTN: Chief, Docketing and Service Section, Washington, DC 20555, and shall include a copy of the answer to the Order. Copies of the hearing request also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137 and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is

adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing, shall be whether this Order should be sustained.

In the absence of any request for hearing the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or request for hearing shall not stay the immediate effectiveness of section IV of this order.

In addition, in the absence of any request for a hearing, the provisions specified in Section V shall be effective and final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland this 7th day of March 1991.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-6207 Filed 3-14-91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2477, Amdt No. 3]

Indiana (With Contiguous Counties in Ohio, Kentucky, Michigan, & Illinois); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 22, 1991, to the President's major disaster declaration of January 5, to include Lake County in the State of Indiana as a disaster area as a result of damages caused by severe storms and flooding beginning December 28, 1990 and continuing through January 22, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Cook and Will in the State of Illinois may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The economic injury numbers are 722900 for the State of Indiana and 723200 for the State of Illinois.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 7, 1991, and for economic injury until the close of business on October 7, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-6135 Filed 3-14-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2481]

Tennessee; Declaration of Disaster Loan Area

Maury County and the contiguous counties of Giles, Hickman, Lawrence, Lewis, Marshall, and Williamson in the State of Tennessee constitute a disaster area as a result of damages caused by flooding which occurred on February 21, 1991. Applications for loans for physical damage may be filed until the close of business on May 6, 1991 and for economic injury until the close of business on December 6, 1991 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---------|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-profit Organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 9.125 |

For Economic Injury:

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 6, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91-6136 Filed 3-14-91; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine uses for TVA-2, "Personnel Files-TVA" and TVA-11, "Payroll Records-TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish new routine uses for the systems of records entitled TVA-2 "Personnel Files-TVA" and TVA-11 "Payroll Records-TVA." Details of the proposed new routine uses are described below. The full text of TVA-2 appears at 55 FR 34817-18, August 24, 1990, and the full text of TVA-11 appears at 55 FR 34824-26, August 24, 1990. TVA's intention to establish another routine use for TVA-2 appears at 56 FR 4119, February 1, 1991.

DATE: Comments must be received by April 15, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub.L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

TVA-11

SYSTEM NAME:

Payroll Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-6151 Filed 3-14-91; 8:45 am]

BILLING CODE 8120-02-M

Information Collection Under Review Paperwork Reduction Act of 1980, as amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection:
Commercial/Industrial Biomass Energy-
Using Facilities in the Southeastern
United States.

Frequency of Use: On Occasion.

Type of Affected Public: State or local governments, businesses or other for-profit, small business or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1200.

Estimated Total Annual Burden Hours: 600.

Estimated Average Burden Hours Per Response: 0.5.

Need For and Use of Information: The Southeastern Regional Biomass Energy Program, managed under contract from the Department of Energy by TVA, will use the information to update the "Directory of Biomass Installations in 13 Southeast States" in order to assess trends in alternate energy usage, match fuel suppliers with fuel users, and to otherwise facilitate the growth of the industry by sharing information and expertise.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 91-6150 Filed 3-14-91; 8:45 am]

BILLING CODE 8120-02-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90-40-IP-No. 2]

Cooper Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Cooper Tire & Rubber Company (Cooper), of Findlay, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 27, 1990, and an opportunity afforded for comment (55 FR 53228).

Paragraph S6.5(d) of Standard No. 119 requires that tires manufactured for use

on vehicles other than passenger cars be labelled as follows:

"Max. load _____ lbs. at _____ psi cold" for those tires rated only for single load. Cooper manufactured and shipped 786 of its ST225/75R15 Cooper Travel Trac Load Range D tires that did not comply with Standard No. 119. These tires were incorrectly stamped as follows:

MAX. LOAD 2540 LBS AT 65 P.S.I. MAX. PRESS

The correct label for these tires is:

MAX. LOAD 2540 LBS. AT 65 P.S.I. COLD.

The noncompliance is that the tires were stamped MAX. PRESS instead of COLD.

Cooper stated that the tires complied with all other requirements specified in 15 U.S.C. 1421 and 49 CFR part 571.

Cooper also stated that the noncompliance was caused by Cooper's erroneous use of the language in FMVSS No. 109, in the tire molds for the ST225/75R15 Cooper Travel Trac. In support of its petition, Cooper stated that the noncompliance is inconsequential to safety because the P.S.I. (pounds per square inch) stamped on the tire is correct for the maximum load indicated.

No comments were received on the petition.

The agency has considered the effect of the erroneous use of the words "Max. Press." instead of "Cold". It believes this to be a distinction without a difference. "Max. Press." is an abbreviation for "maximum permissible inflation pressure". This term is defined by Standard No. 109 as "the maximum cold inflation pressure to which a tire may be inflated." Although Cooper used the words "Max. Press." instead of "Cold", a reading of section S5.6(d) of Standard No. 119 demonstrates clearly that the information that that standard requires to be provided on the tire is "the maximum load rating and corresponding inflation pressure", expressed on the tire in "psi cold". Thus, each standard, though expressed in different terms, requires the same information to be placed on the tire—the maximum permissible inflation pressure when the tire is cold. Finally, as the petitioner notes, the psi stamped on the tire is correct for the maximum load indicated.

Accordingly, in consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.6.

Issued: March 12, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6196 Filed 3-14-91; 8:45 am]

BILLING CODE 4810-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB number: 1535-0013.

Form number: PD F 1048, PD F 1048-1, PD F 2243.

Type of review: Extension.

Title: Application for Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities; Supplemental Statement in Support of an Application for Relief on Account of Loss, Theft, Nonreceipt or Destruction of United States Savings and Retirement Securities; Statement Concerning United States Securities.

Description: Application is used by owners of securities to request substitute securities or payment in lieu of lost, stolen or destroyed securities. Supplemental statements are used by owners, or others having knowledge concerning the securities.

Respondents: Individuals or households.

Estimated number of respondents: 80,000.

Estimated burden hours per response: 25 minutes.

Frequency of response: On occasion, Other (Supplemental Forms PD F 1048-1 and PD F 2243 only as needed).

Estimated total reporting burden: 32,000 hours.

OMB number: 1535-0064.

Form number: PD F 1980, PD F 2490.

Type of review: Extension.

Title: Description of United States Savings Bonds Series HH/H;

Description of United States Savings Bonds/Notes.

Description: Used by an owner of United States Savings Bonds/Notes to describe their holdings when they apply to the Bureau of the Public Debt for some type of relief or service.

Respondents: Individuals or households.

Estimated number of respondents: 19,000.

Estimated burden hours per response: 6 minutes.

Frequency of response: On occasion.

Estimated total reporting burden: 1,900 hours.

Clearance officer: Rita DeNagy (202) 447-1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239-0001.

OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-6159 Filed 3-14-91; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 11, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Revision

1. Veterans Benefits Administration.
2. Application for Educational Benefits (Under chapters 30 and 32, title 38, U.S.C.; section 903, Public Law 96-342; and chapter 106, title 10, U.S.C.).
3. VA Form 22-1990.
4. The form is used by individuals to apply for VA education benefits. This information is used to determine the applicant's eligibility.
5. One time.
6. Individuals or households.
7. 172,553 responses.
8. 45 minutes.
9. Not applicable.

[FR Doc. 91-6237 Filed 3-14-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate to the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 11, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veterans Benefits Administration.
2. Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders.

3. VA Form 26-8736.

4. This form is used by nonsupervised lenders to request approval to close loans on an automatic basis. The information is used to determine whether applicants meet standards of acceptability.

5. On occasion.

6. Businesses or other for-profit.

7. 100 responses.

8. 25 minutes.

9. Not applicable.

[FR Doc. 91-6238 Filed 3-14-91; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on April 2-3, 1991, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on April 2 will convene at 6 p.m. and the session on April 3 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertil, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535-7603) prior to March 27, 1991.

Dated: March 5, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-6239 Filed 3-14-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, March 12, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's assistance agreements with insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr., Ms. Susan Krause, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was

practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 13, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-6406 Filed 3-13-91; 3:22 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Tuesday, March 12, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of a failed thrift institution, and (2) recommendations regarding the sale of problem commercial loans in conservatorship.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Susan F. Krause, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 21, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-6318 Filed 3-13-91; 9:20 am]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

Corrections

In rule document 91-5295 beginning on page 9878, in the issue of Friday, March 8, 1991, make the following corrections:

§ 301-1.2 [Corrected]

1. On page 9878, in the second column, the section heading should read

§ 301-1.2 Applicability.

§ 304-1.2 [Corrected]

2. On page 9879, in the second column, in paragraph (b)(8) "provisions of Volume 6 of the Foreign Affairs Manual (FAM) or Volume 1 of the Joint Federal Travel Regulations (JFTR)" should read "provisions of Chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100)¹ or Volume 1 of the Joint Federal Travel Regulations (JFTR)²".

3. On page 9879, in the second column, add footnotes 1 and 2 to paragraph (b)(8) as follows:

¹ Chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100) is available from the Department of State, Publishing Services, Washington, DC 20520-0854.

² Volume 1 of the Joint Federal Travel Regulations (JFTR) is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

§ 304-1.6 [Corrected]

4. On page 9880, in paragraphs (a) and (b) of § 304-1.6, "FAM" should read "6 FAM 100".

§ 304-1.7 [Corrected]

5. On page 9880, in the first column, in § 304-1.7(a), in the tenth line, "FAM" should read "6 FAM 100".

6. On the same page, in the second column, § 304-1.7(b), in the sixth line, "the FAM" should read "6 FAM 100" and in the eighth line, add "the" before "allowance".

7. On the same page, in the same column, in § 304-1.7(c), in the last line, "FAM" should read "6 FAM 100".

8. On the same page, in the same column, in § 304-1.7(d), in the last line, "the FAM or JFTR" should read "6 FAM or the JFTR".

§ 304-1.8 [Corrected]

9. On page 9880, in the 2d column in § 304-1.8(a) in the 13th line, remove "the", in the 14th line, remove "of" and add "incurred by", and in the 16th line, remove "incurred".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 60

[Docket No. 89N-0169]

RIN 0905-AD16

Patent Term Restoration Regulations

Correction

In proposed rule document 91-3429 beginning on page 5784 in the issue of Wednesday, February 13, 1991, make the following corrections:

1. On page 5785, in the third column, in the paragraph under *C. Eligibility Assistance*, in the sixth line, insert "patent term restoration. FDA will verify whether the permission for the" after "for"; and in the eighth line from the bottom of the page, insert "would" before "implement".

§ 60.3 [Corrected]

2. On page 5787, in the first column, in § 60.3(b)(16), in the seventh line "hybidoma" should read "hybridoma".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AB96

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

Correction

In rule document 90-28744 beginning on page 51208 in the issue of Wednesday, December 12, 1990, make the following corrections:

1. On page 51221, in the first column, in the second paragraph, in the fifth line, "course" should read "source".

2. On page 51224:
a. In the first column, in the eighth line from the bottom of the page, insert "of functional impairment and how we assess the manifestations" after "manifestations".

b. In the third column, in the third paragraph, in the fourth line "the" should read "are"; and in the second line from the bottom of the page, "not" should read "now".

3. On page 51229, in the third column, in the Authority citation, in the first line, "442 Appendix 1 to Subpart P [Amended]" should read "422".

4. On page 51230:
a. In the first column, in amendment number 8, in the fifth line, the comma should be a semi-colon; and in amendment number 9, in the sixth line, "2.1" should read "2".

b. In the second column, in amendment number 12, in the fourth line and in amendment number 13, in the fifth line, "least" should read "less".

c. In the third column, in the first paragraph, in the ninth line, "liability" should read "lability"; and in the second paragraph, in the fourth line, "Standardization" should read "Standardized".

5. On page 51231:
a. In the first column, in the third paragraph, in the fourth line from the bottom of the paragraph, "of" should read "for".

b. In the second column, in the seventh line from the top of the page remove the second "specific".

c. In the third column, in the sixth paragraph, in the fourth line, "preschool-children" should read "preschool-age children".

6. On page 51232, in the first column, in the third paragraph, in the eighth line, insert "or" after "results".

7. On the same page, in the third column, in the second paragraph, in the fifth line, insert a comma after "112.05A".

8. On page 51233, in the second column, in the fifth paragraph, in the first line, "those" should read "these"; and in the sixth paragraph, in the fifth line from the bottom of the page, "liability" should read "lability".

9. On page 51234, in the first column, in the sixth line from the top of the page, "infrequent" should read "in frequent"; and in the fifth paragraph, in sentence number 4, "effect" should read "affect".

10. On page 51235, in the second column, in the tenth line from the bottom of the page, "Disorders" should read "Disorder".

11. On the same page, in the third column, in paragraph E., in the first line, "developmental" should read "development".

12. On page 51236, in the first column, in the Authority citation, in the first line, "1169" should read "1619".

BILLING CODE 1505-01-D

Part 141

Friday
March 15, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 141

Pilot, Flight Instructor, and Pilot School
Certification; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 61 and 141

[Docket No. 25910; Amdts. 61-490, 141-4]

RIN 2120-AB12

Pilot, Flight Instructor, and Pilot School Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) governing pilot and flight instructor initial and recurrent training and the operations of Federal Aviation Administration (FAA) certificated pilot schools. The amendments address concerns identified by the National Transportation Safety Board (NTSB) and the public, and issues raised in petitions for exemption from the rules. This action is intended to update standards of pilot and flight instructor performance and to respond to technological advances in pilot training since the current rules were issued.

EFFECTIVE DATE: April 15, 1991.**FOR FURTHER INFORMATION CONTACT:**

Edna French, Manager, or John Lynch, Regulations Branch, AFS-850, General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:**Background**

In 1987 the FAA began a regulatory review of FAR parts 61, 141, and 143. The review was undertaken to update the rules in light of advances in aircraft technology and the increasing complexity of the National Airspace System since the last revisions to these parts in the early 1970's. A major goal of the review is to identify areas of disparity between the rules and the level of training demanded of pilots in today's aviation environment. The review was prompted, in part, by a history of 22 amendments and approximately 3,585 exemption actions to FAR parts 61 and 141 since their last major revisions in 1973 and 1974, respectively. Recommendations and comments from the NTSB, the public, and the FAA have also demonstrated the need for the regulatory review.

In support of this regulatory review, the FAA completed a historical review of parts 61, 141, and 143, in January 1988. The "Review of Historical FAA Actions in Support of Regulatory Review of FAR

parts 61, 141, and 143" (U.S. Department of Transportation, Transportation Systems Center), which is on file in Docket No. 25627, examined items related to pilot training and certification, pilot schools, and ground instructors. The FAA also received communications and input from pilot schools and aviation departments at colleges and universities operating under parts 61 and 141 which aided in determining the focus of this regulatory review.

The FAA identified three needs within this review: first, issues of immediate concern recommended by the NTSB and public comments; second, the requirements for aircraft operations in today's environment; and finally, the requirements for pilots in the year 2010 and beyond. Accordingly, the regulatory review was broken down into three phases corresponding to the needs identified above.

This final rule completes Phase 1 of the regulatory review with amendments to the regulations regarding immediate issues. The amendments to this rule are based on recommendations from the NTSB and comments from training schools, aviation associations, aviation industries, and the public. Two public hearings for this Phase 1 rulemaking were held prior to the drafting and publishing of Notice of Proposed Rulemaking (NPRM) No. 89-14 (54 FR 22852; May 26, 1989). The two hearings were held in Washington, DC (July 26-27, 1988) and in Oshkosh, Wisconsin (August 3-4, 1988) (53 FR 24178; June 27, 1988).

Phase 2 of the regulatory review addresses parts 61 and 141 issues that require more extensive research. Any proposed changes to part 143 will also be addressed in this phase. Phase 2 began simultaneously with Phase 1 and will culminate in a second rulemaking action. Additional public hearings to discuss issues under study in Phase 2 were held in Washington, DC (September 12-13, 1989); Chicago, Illinois (September 19-20, 1989); Los Angeles, California (October 3-4, 1989); and Orlando, Florida (October 16-17, 1989). A Notice of Hearings (54 FR 22732; May 25, 1989) outlined the general topics for the public hearings; transcripts are available for review in Docket No. 25627. Phase 2 also includes a Pilot/Flight Instructor Job/Task Analysis (JTA), completed on March 31, 1989, which incorporated the results of a study on areas of pilot knowledge, skills, abilities, and attitudes required in today's aviation environment. The JTA will provide a foundation for the regulatory review in the development of testing requirements and training standards and materials. A Notice of

Availability published in the *Federal Register* (54 FR 22735; May 25, 1989) announced that the JTA is available for examination in Docket No. 25627 or for purchase on a floppy diskette from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Phase 3 is currently in a preliminary stage of development. It will be a broader, long-term approach that will address pilot and flight instructor requirements for the year 2010 and beyond. Although there is no schedule for completion of Phase 3, an NPRM and Final Rule will be published in the *Federal Register* for public comment as that stage develops.

Discussion of Public Comments and the Amendments

This final rule is based on NPRM No. 89-14 (54 FR 22852; May 26, 1989). The rule amends parts 61 and 141, which address pilot and flight instructor training and certification.

Within part 61, the rule establishes the following: a requirement for a flight instructor endorsement for pilots operating tailwheel airplanes; a training requirement for high altitude airplanes; a training requirement for pilots obtaining airplane type ratings; the addition of aeronautical knowledge training on stall and spin awareness and recovery techniques to the basic subject areas of required training; a requirement for a flight instructor endorsement certifying that initial flight instructor candidates have received flight instruction and are proficient in spin and spin recovery techniques; and a requirement for a spin demonstration on a retest for flight instructor certification if the candidate fails either the oral or flight portion of the practical test due to deficiencies in stall/spin awareness and associated procedures and techniques. In response to public comments received on NPRM No. 89-14, the proposed modification of part 61 flight review requirements is not contained in this rulemaking. With regard to the flight review, this final rule instead contains a provision that allows satisfactory completion of a phase of an FAA-sponsored pilot proficiency award program (described in Advisory Circular No. 61-91F, which will be discussed in further detail under the flight review section of this preamble) to suffice for the flight review requirements.

Within part 141, this final rule modifies the requirement that chief instructors be on site while a school is conducting instruction by permitting chief instructors to be available by electronic means; permits pilot schools

to establish satellite bases beyond the present 25-nautical mile limit; eliminates the 100-hour recency of instruction experience requirement for designation of chief flight instructors; and reduces the total experience time required of assistant chief flight instructors.

This final rule contains certain amendments to part 61 that were not discussed in the NPRM because of a separate rulemaking action concerning recreational and non-instrument-rated private pilots, that did not become effective until after NPRM No. 89-14 was published. These additional amendments, discussed in more detail later in this section, make this rule consistent with Amendment 61-82, "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" (54 FR 13028; March 29, 1989). These additional amendments (§§ 61.97 and 61.98) conform to changes already adopted and codified in the FAR.

In addition, this rule contains certain "cleanup items." For example, certain rules have been eliminated because those rules contain expiration dates that have passed. The FAA agrees with public comments that the use of gender classification in the regulations is not appropriate, and has made revisions in the terminology of sections where gender-specific pronouns were used. Other editorial and cleanup changes that are not addressed by this rulemaking will be addressed in Phase 2 of this regulatory review.

Two dockets, Nos. 25627 and 25910, were opened to receive comments on Phases 1 and 2 of this regulatory review. The first docket, Docket No. 25627, was established to receive comments throughout the entire regulatory review and will remain open until the FAA makes notification of its closing. Docket No. 25627 was established to facilitate the orderly flow of collecting comments, recommendations, and ideas from the public. The second docket, Docket No. 25910, was established to receive specific comments from the public on NPRM No. 89-14 upon which this final rule document is based. As a result of the two dockets, there was some confusion among the public as to which docket pertained to NPRM No. 89-14. Because some comments were addressed to the incorrect docket, the FAA has considered public comment on NPRM No. 89-14 from several official sources. These sources are as follows:

- Docket No. 25910. This docket was established under NPRM No. 89-14 (54 FR 22852; May 26, 1989) with publication of the proposed rule. The FAA requested

that written public comments on this NPRM be submitted to Docket No. 25910 on or before August 24, 1989. Also, the FAA invited interested persons to participate in the making of the proposed rules by submitting written data, views, or arguments. Comments concerning the economic, environmental, federalism- or energy-related implications of the proposals contained in the notice were also invited.

- Docket No. 25627. As discussed above, this docket was established to receive comment on the entire regulatory review. The Notice of Hearings (54 FR 22732; May 25, 1989) and the Notice of Availability (54 FR 22735; May 25, 1989) for Phase 2 requested that written comments related to those hearings and the JTA be submitted to Docket No. 25627. A number of the written submissions received in that docket, however, referred to Phase 1 proposals. The FAA stated in NPRM No. 89-14 that Docket No. 25627 would remain open until the FAA gives notice that the docket is closed, as a means of receiving information from the public throughout the regulatory review.

- The Phase 2 public hearings. Although these hearings were not intended to discuss the Phase 1 NPRM, members of the public took the opportunity to address, through oral presentations as well as written submissions to Docket No. 25627, proposals contained in NPRM No. 89-14. The notice announcing those hearings invited the public to address specific questions related to Phase 2 of the regulatory review, but also to express any additional views and recommendations for changes to parts 61, 141, and 143. Thus, these recent hearings became a forum for discussing the Phase 1 NPRM.

Thus, the FAA sought to give every possible consideration to issues raised and data presented by the public at all stages of the rulemaking. Authority for consideration of comments received after the official closing date is found in § 11.47, which permits consideration of late filed comments so far as possible, without incurring expense or delay. The FAA believes that all interested persons have been given an opportunity to participate in the rulemaking and due consideration has been given to all views presented.

From the sources described above, the FAA recorded a total of 297 specific comments from 112 commenters responding to proposed amendments addressed in NPRM No. 89-14. Many comments focused on the expanded flight review proposal and on the

proposed endorsement for tailwheel airplanes. Seventy-eight comments referred to the proposed changes to the flight review; 64 of these comments opposed the proposal. Forty-four comments referred to the proposal for changes to tailwheel airplane operations; 26 of these comments opposed the proposal.

All comments received on the following three proposals were in support: the requirement that flight instructor candidates receive flight instruction and demonstrate proficiency in spin and spin recovery techniques (18 comments); the clarification of the requirement for chief and assistant chief instructor availability to include availability through electronic means (17 comments); and the elimination of the 25-nautical mile limit between satellite bases and the main operations base (12 comments).

In addition to specific proposals, some commenters raised other related issues. One commenter recommended a change in the pass-rate requirement for part 141 school recertification. Although related, the pass-rate requirement was not an issue in NPRM No. 89-14 and has therefore not been addressed in this final rule. The Aircraft Owners and Pilots Association (AOPA) and several other commenters stated that they see no need for a regulatory review on parts 61, 141, and 143. However, as stated in the background section of this preamble, the FAA found sufficient amendments and exemption actions since the last major revisions to parts 61 and 141 in the mid-1970's to warrant this review.

Other comments that did not specifically apply to any particular proposal addressed in NPRM No. 89-14 included 12 comments opposing Amendment 61-82, "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer Than 400 Hours" (54 FR 13028; March 29, 1989). One of these commenters suggested that the annual flight review contained in that amendment be a function of how frequently a pilot flies, not cumulative flight hours. The commenter suggested that a pilot who has flown fewer than 12 hours in the previous year be required to complete an annual flight review regardless of the pilot's total flight time. A pilot who has flown more than 12 hours in the previous year would be required to complete a biennial review, under that suggested system. The annual flight review is not an issue within this regulatory proposal. However, the FAA has received a petition for rulemaking from AOPA to delete the annual flight

review rule. AOPA, in its petition, took issue with the data used by the FAA for implementing new § 61.56(d). The FAA is reviewing AOPA's petition. When completed, the FAA response will be published in the *Federal Register*.

The comments received on NPRM No. 89-14 reflect the views of a broad spectrum of the aviation public. These included individuals, organizations representing professional and general aviation pilots, major training organizations, industry representatives, and state aviation agencies. Twelve of the principal organizations to respond to NPRM No. 89-14 were the Air Line Pilots Association (ALPA), AOPA, AOPA Air Safety Foundation (AOPA ASF), Experimental Aircraft Association (EAA), Embry-Riddle Aeronautical University (ERAU), FlightSafety International, General Aviation Manufacturers Association (GAMA), Michigan Aeronautics Commission, National Air Transportation Association (NATA), Society of Experimental Test Pilots (SETP) in association with Safe Action in Flight Emergency (SAFE), Soaring Society of America (SSA), and the Wisconsin Bureau of Aeronautics.

The following is a discussion of issues addressed in the comments in accordance with the major areas covered by the proposed amendments in NPRM No. 89-14. These areas are tailwheel operations, high altitude training, airplane type rating curricula, flight reviews, spin awareness training, flight instructor spin training, spin demonstration on a retest for flight instructor certification, chief instructor availability, chief and assistant chief flight instructor qualifications, and satellite bases. The discussion includes an explanation of the FAA's views on each issue and a description of the final amendment.

Tailwheel Airplanes

NPRM No. 89-14 proposed a requirement for pilots to receive a one-time flight instructor endorsement in order to act as pilot in command of a tailwheel airplane. The endorsement would certify that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings, and go-around procedures. The proposal was aimed primarily at new tailwheel airplane pilots with experience only in tricycle gear airplanes.

Forty-four comments were received on this proposed amendment. Eighteen commenters favored the endorsement and 26 opposed it. Principal supporters of the amendment were ERAU, the Michigan Aeronautics Commission, SSA, SETP, and the Wisconsin Bureau of Aeronautics. These and other entities

expressed their support of the proposed amendment by citing the unique characteristics of tailwheel airplanes, particularly in the take-off and landing phases of operations.

Several commenters suggested modifications to the proposed amendment. For example, SSA suggested that proposed § 61.31(g) and related advisory materials refer specifically to "normal full-stall landings" and to "situations which may call for wheel landings."

Note: A "normal full-stall landing" is a landing where the airplane is landed with the engine at idle power upon touchdown and just a few inches prior to touchdown the airplane is fully stalled. A "wheel landing" is where some engine power is used to assist the airplane to touchdown on its front main wheels. SSA pointed out that many poor landings in tailwheel airplanes are often attributed to a pilot's over-reliance on wheel landings.

The Wisconsin Bureau of Aeronautics recommended changing the wording of proposed § 61.31(g) to read: "Tailwheel Airplanes. No person may act as pilot in command * * *" to standardize the tailwheel endorsement requirement. This change would make the requirement mandatory for all pilots who are making a transition to tailwheel airplanes and who have had no tailwheel experience prior to the effective date of this amendment. The proposal, drafted before the Recreational Pilot final rule was issued, referred to holders of private, commercial, or airline transport pilot (ATP) certificates.

Several commenters, including ERAU and the Michigan Aeronautics Commission, expressed concern about flight instructors who issue the endorsement, recommending that those instructors should have some specified minimum experience in tailwheel equipped airplanes. None of the supporters favored requiring a flight review for tailwheel airplanes.

AOPA, AOPA ASF, EAA, and NATA were among the principal opponents of the tailwheel endorsement requirement. Several of the opponents noted that the FAA had previously rejected NTSB Safety Recommendations A-80-24 and A-80-25, which called for both increased currency requirements and an instructor endorsement for tailwheel airplane operations. The recommendations cited a fatal 1979 landing accident involving a Piper PA-18 Super Cub flown by a pilot with limited experience in tailwheel airplanes.

These organizations stated that an adequate flight check of tailwheel pilots should suffice because a flight check

requires the same basic skills and knowledge as learning to fly any other airplane. NATA and other commenters noted that insurance companies and aircraft rental companies normally require a checkout as a prerequisite to rental, and that responsible individuals request proper training before operating a tailwheel airplane. NATA suggested that the FAA encourage student pilot awareness rather than enact what the organization described as an unnecessary additional regulatory requirement. AOPA said that on the basis of NTSB data for 1983-1988, it concluded that approximately 6 percent of all tricycle gear airplanes and 5 percent of all tailwheel airplanes were involved in landing accidents, and that 9 percent of all tricycle gear airplanes and 12 percent of all tailwheel airplanes were involved in takeoff accidents.

The FAA has examined accident data for tailwheel airplanes, as well as comparisons of data for tricycle gear and tailwheel airplanes. These comparisons are based on estimates, because the FAA does not maintain statistics on the composition of the general aviation fleet by type of landing gear; that is, the FAA lacks exact figures on the number of active tailwheel vs. tricycle gear airplanes. However, based on overall fleet information, the FAA has updated its estimates of fleet composition in order to have a basis for estimating relative accident rates. NTSB accident reports do indicate the airplane's landing gear configuration, and the FAA has examined these data in the context of the fleet composition estimates. This review reaffirms the FAA's belief that the data support its previous conclusions, as well as the NTSB's conclusion in the study *Single-Engine, Fixed-Wing General Aviation Accidents, 1972-1976* (NTSB-AAS-79-1), that tailwheel airplanes have proportionately more takeoff and landing accidents than tricycle gear airplanes.

As part of this review, a comparative study was done of tailwheel versus tricycle gear takeoff, landing, and taxi accidents using 1983-1988 data compiled from the NTSB Data Research Branch, the *1988 General Aviation Activity and Avionics Survey*, and the *1988 Census of U.S. Civil Aircraft*. This study focused on takeoff, landing, and taxi accidents, because they are more likely to reflect the different landing gear configurations than are accidents in cruise flight.

The FAA estimates that, in 1988, tailwheel airplanes comprised about 19 percent of the total active general aviation piston-powered airplane fleet—about 37,000 tailwheel compared with

approximately 155,000 tricycle gear airplanes, including both retractable and fixed gears. Nevertheless, tailwheel airplanes accounted for 26 to 29 percent of accidents in landing, takeoff, and taxi phases of flight for that group of airplanes. For example, in 1988, tricycle gear airplanes had 1,098 accidents in these phases of operation, compared with 455 for tailwheel airplanes.

If the data are converted into accident rates (accidents per aircraft), the results show a much higher rate for tailwheel than for tricycle gear airplanes. In 1988, the rate of tailwheel accidents in the takeoff, landing, and taxi phases of flight on a per aircraft basis was 74 percent higher than for tricycle gear airplanes. For the period covered by the study, tailwheel accidents per aircraft averaged 60 percent higher than tricycle gear accidents per aircraft.

In addition, the FAA is persuaded that this amendment will not impose a significant burden on pilots. Many commenters, although opposed to the amendment, assert that most pilots already obtain an adequate "checkout" prior to renting or insuring a tailwheel airplane. However, if this is the case, the FAA believes that this amendment will mainly serve to ratify an already common practice and, additionally, will extend this worthwhile practice to that minority of pilots who would not otherwise obtain sufficient initial tailwheel training.

The higher accident rate and the fact that this type of initial or transition tailwheel training is already commonplace indicate that the proposed instructor endorsement is both warranted and reasonable. The FAA is therefore adopting the proposed amendment in this final rule.

This final rule adds § 61.31(g) to the FAR, requiring a one-time flight instructor endorsement for a person to act as pilot in command of a tailwheel airplane. Advisory Circular No. 61-98A, "Currency and Additional Qualification Requirements for Certificated Pilots," has been prepared to address this new training requirement and other requirements for maintaining currency as a certificated pilot, and will be available at Flight Standards District Offices (FSDO's). The requirement for this endorsement will apply to new tailwheel pilots only. Pilots who have logged pilot-in-command time in tailwheel airplanes prior to the effective date of this rule are excepted from this requirement. However, the FAA highly encourages all pilots who operate tailwheel airplanes to receive training in those airplanes.

The final wording has been modified in accordance with the Wisconsin

Bureau of Aeronautics' suggestion noted previously. Thus, instead of referring to specific pilot certificates such as private, commercial, or ATP, the rule refers to any person who acts as pilot in command. This wording is simpler and more comprehensive than the version contained in the proposal.

A second modification made to the originally proposed amendment is in the description of maneuvers to be covered by the flight instructor prior to issuing the endorsement. The NPRM proposed normal, crosswind, and wheel landings. The following qualification has been added to the requirement for wheel landings: "unless the manufacturer has recommended against such landings." The intent of the rule, as observed by SSA in its comment on the proposal, is to ensure that pilots are trained in performing wheel landings in situations that may call for wheel landings, but not to have pilots conduct operations unsuitable for a particular aircraft.

A third and final change in the tailwheel endorsement requirement in this final rule entails eliminating the reference in the rule to "recovery from bounced landings." The rule instead refers to go-around procedures in a general sense. The phrase "recovery from bounced landings" was deleted to eliminate any implication of intentional bounced landings to meet this requirement. Reference to go-around procedures in the regulation is intended to cover go-arounds from unsatisfactory landings, including bounced landings. The intent of this rule is not to require tailwheel pilots to intentionally put the airplane in a situation that could result in an unsatisfactory or unsafe landing, but rather to train in recovery procedures.

This amendment does not contain a requirement for a flight review in a tailwheel airplane nor does it contain a minimum tailwheel hour requirement for instructors providing the endorsement. The FAA continues to believe that additional currency requirements are unnecessary. Likewise, the FAA has seen no justification thus far for a minimum hour requirement for tailwheel flight instructors. However, as a result of this amendment and other amendments included in this final rule, a clarification has been made to § 62.193 "Flight Instructor Authorizations," to authorize flight instructors to provide the training and endorsements required by the tailwheel amendment, the high altitude training and type rating amendments to be discussed in the next section, and the high performance endorsement requirement.

Special Requirement: High Altitude Training and Airplane Type Rating Training

NPRM No. 89-14 proposed two related requirements aimed at pilots who progress to sophisticated, high altitude airplanes. Most of these airplanes require type ratings. Other airplanes, however, are pressurized and capable of high altitude operations, but do not require type ratings. This final rule, as proposed in the NPRM, includes new training requirements for pilots making a transition to high performance, high altitude airplanes. Advisory Circular No. 61-107 ["Operations of Aircraft at Altitudes Above 25,000 feet MSL and/or MAC Numbers (Mmo) Greater Than .75"] will be available to guide both pilots and training organizations in the implementation of the new training requirements. The material is based on current practices, Advisory Circulars, manufacturers' information, and other sources.

(a) High Altitude Flight and Ground Training Requirements

NPRM No. 89-14 proposed a requirement for pilots to complete ground and flight training on high altitude flight prior to transitioning to a pressurized airplane with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet mean sea level (MSL).

Some of the pressurized airplanes that will be affected by this new high altitude training rule are:

1. Piper Aircraft Company: Piper Cheyenne Series 31T, 31T-1, 31T-2, 42-700, and 42-1000; Piper currently does not manufacture any single engine airplanes that will be affected;
2. Cessna Aircraft Company: Cessna 414, 421, 425, 340, and 441; Cessna 500 series; and Cessna 600 series; Cessna currently does not manufacture any single engine airplanes that will be affected;
3. Beech Aircraft Company: Beech King Air Series 90, 100, 200, 300, 350; Beech 2000 (Starship); and Beech 400 (Beech Jet); Beech currently does not manufacture any single engine airplanes that will be affected;
4. Mooney Aircraft: Mooney currently does not manufacture any single engine airplanes that will be affected; and
5. Others: EMB-120; MU-300; G-1159; SA-226/227; SF-340; and F-28.

Note: This is not an all-inclusive list, but merely a representative sample of pressurized airplanes that will be affected by this new high altitude training rule.

Thirty-three comments on high altitude training were received. Eighteen

respondents favored the requirement and 15 opposed it. Opponents of the proposal generally favored maintaining present regulations. Several commenters said that the industry has policed itself by including this training in its own programs.

AOPA ASF expressed limited support for such an amendment. In lieu of adding a new section, AOPA ASF suggested an addition to current § 61.31(e) (which requires an instructor endorsement for high performance airplanes) that would require an endorsement for a pilot to fly a pressurized airplane that has "a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL."

GAMA and SSA, both supporters of the proposal, recommended deleting from the proposed rule the reference to including in the curriculum "the history and causes of some past accidents and incidents involving the pressurization of systems of the airplane." SSA questioned the availability of the historical information, and said other aspects of the proposal would cover the most likely accident causes related to pressurization systems. GAMA found the language inappropriate for a regulation, even though the concept of learning from past mishaps may be a useful learning tool.

ALPA, which also supported the proposal, stated that a pilot who flies at an altitude where hypoxia or other physiological problems may affect performance should understand those phenomena.

AOPA and EAA both said that the FAA had not presented significant evidence in support of the proposal. They said they believe that the selection of 25,000 feet MSL was arbitrary and without foundation. AOPA said it would support an Advisory Circular outlining recommended high altitude training. One other commenter recommended a generic high altitude rating for pilots who fly above 14,000 feet MSL.

As stated in the NPRM, there has been concern among the NTSB, the FAA, and the public about the ability of general aviation pilots to make a transition to pressurized high performance airplanes, including turbine-powered airplanes capable of high altitude flight, without sufficient appreciation of the capabilities and limitations of these airplanes. The proposed training requirements include ground training on high altitude aerodynamics and meteorology, hypoxia and other high altitude sickness problems, the effects of prolonged usage of supplemental oxygen, and other physiological aspects of high

performance, high altitude flight. There also is a flight training requirement to perform a flight in an airplane or an approved simulator at an enroute altitude above 25,000 feet MSL at normal cruise. While current criteria may require a pilot to demonstrate ability to control the airplane under normal flying conditions, they do not ensure that the pilot is competent to cope with other demands consistent with the unique characteristics of the airplane in a high altitude environment.

The determination of 25,000 feet MSL as high altitude for the purpose of these amendments has been made on the basis of established requirements including § 91.32(b)(1), which requires supplemental oxygen for pressurized aircraft flying above flight level (FL) 250, and §§ 121.417(e) and 135.331(d), which require advanced instruction in hypoxia, respiration, and other factors and emergencies related to high altitude flight for crewmembers who serve in operations above 25,000 feet MSL. Certain supplemental oxygen requirements under §§ 121.331 and 121.333 also begin above FL 250.

The FAA has also taken note of comments in support of adding a requirement for pilots to attend a physiological training course including the use of a high altitude chamber. Although such additional training would be beneficial, this issue goes beyond the scope of the initial NPRM, and would therefore be inappropriate to add at this time. However, the FAA invites further public comment and may consider the issue in Phase 2 of the regulatory review.

As a matter of clarification, and in response to recommendations received at the public hearings, § 61.31(f)(1)(ii) has been modified from the wording published in NPRM No. 89-14. The FAA wants instructors to understand that the intent of this rule is to require rapid descents only to simulate emergency "rapid decompression" procedures, not to perform any act that would actually depressurize the airplane. In one specific accident that occurred a few years ago, evidence indicated that the instructor may have deliberately depressurized the airplane. The FAA wants it known that it does not condone any deliberate rapid depressurization of an airplane in a nonemergency situation. Rapid depressurization of an airplane is an extremely dangerous procedure and should never be done intentionally for training purposes. The FAA has determined that a transfer of knowledge and skills can be obtained by receiving training on emergency descent procedures. This training will require the trainee to don the oxygen mask, turn on

the supplemental oxygen controls, configure the airplane for an emergency descent, and perform the emergency descent.

Based on public comment and NTSB Safety Recommendations A-82-127 and A-82-128, the FAA believes that aviation safety would be served by requiring high altitude training, as proposed. Simply requiring an instructor's endorsement for high altitude airplanes, without specifying the training in the rule, as AOPA ASF suggests, would fall short of the intent of this regulation. The rule establishes that training in high altitude operations is specifically required for the pilots of the affected airplanes. The flight training above 25,000 feet MSL required by this amendment is intended for normal cruise flight. Simulated depressurizations and rapid descents required by this rule can be practiced below 25,000 feet MSL. Additional guidance on high altitude training will be available in Advisory Circular No. 60-21, "Announcement of Availability: A Series of Aeronautical Decision Training Manuals."

Section 61.31(f)(1)(ii) permits the flight training to be accomplished in a simulator that meets the requirements of § 121.407. An additional rulemaking is in progress to expand the use of simulators under part 61 and eliminate the need for cross references.

The rule contains a "grandfather" provision, so that pilots already qualified in a pressurized airplane with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL would not be required to undergo the training. In addition, prior accomplishment of a pilot proficiency check for a pilot certificate or rating, either in an appropriate airplane or in a simulator that meets the requirements of § 121.407, would meet the intent of the "grandfather" provision. The rule also contains a provision allowing a pilot-in-command check by the U.S. military or one completed under part 121, 125, or 135 to substitute for the requirement if that check is either in an appropriate airplane or in a simulator that meets the requirements of § 121.407.

The FAA invites further public comment during Phase 2 of this regulatory review, on the issue of special qualifications or requirements for flight instructors who provide this high altitude training. For example, the Michigan Aeronautics Commission expressed concern over the lack of experience requirements in the amendment for flight instructors giving training above 25,000 feet MSL. The Commission proposed that the

requirements for flight instructors who perform this training include training in a high altitude chamber, attending ground training on physiological effects of high altitude flight and aerodynamics, and establishing a base level of flight experience.

One modification to the NPRM proposal requires a high altitude logbook "endorsement" rather than a "written statement" as stated in NPRM No. 89-14. This change was made throughout the rule to make the terminology of the new amendments consistent with current regulations. Current regulations require either a logbook "endorsement" or simply that a flight instructor "certify" in the pilot's logbook or training records that training has been provided. A "sign-off" on a part 61 or 141 training record would be acceptable for purposes of high altitude training. The addition of the new term "written statement" would only create confusion.

A second modification to the proposal stated in the NPRM deletes the clause "the history and causes of some past accidents and incidents involving the pressurization of systems of the airplane" from proposed § 61.31(f)(1)(i). This clause was removed after consideration of comments received from GAMA and SSA.

(b) Airplane Type Rating Training

NTSB Recommendations A-82-127 and A-82-128 state that a structured training curriculum for pilots applying for a type rating in turbojet airplanes would ensure an acceptable level of knowledge of turbojet performance characteristics and operating environment. Public comments on this issue prior to formulation of the NPRM, including statements from AOPA, AOPA ASF, and NATA, generally supported the tenor of this recommendation.

NPRM No. 89-14, therefore, proposed to establish a training curriculum requirement appropriate to the airplane type rating being sought. The NPRM proposal extended the scope of the NTSB recommendations to include all airplanes requiring type ratings rather than limiting the training to pilots of turbojet airplanes.

Seventeen public comments were received on the issue of airplane type rating curricula. Eleven favored the amendment and 6 opposed it.

AOPA, AOPA ASF, and EAA expressed opposition based on the present flexibility of curricula available to ATP and airplane type rating applicants. They stated that inclusion of a curriculum in the FAR would unnecessarily require future amendments to follow the rulemaking

process, thus slowing the process of meeting new demands, technologies, and innovations.

GAMA, SETP, FlightSafety, and other supporters of the amendment expressed views on the importance of improved training. ALPA expressed support of the proposal and stated that the proposal would provide for standardized and appropriate airplane type rating training. GAMA supported the proposal and said it believes the curriculum should include all items currently required by the ATP practical test. GAMA recommended revising the proposed curriculum to include standards for crew coordination, use of standard operating procedures, and judgment/pilot decision making. Resolving these issues is beyond the scope of this final rule, but further consideration will be given in Phase 2 of the review.

The FAA understands the concern regarding limited flexibility in adjusting curricula to meet changing technology. However, AOPA, AOPA ASF, and EAA appear to have misunderstood the NPRM proposal to read that the curriculum itself would be included in the rule. The amendment proposed in NPRM 89-14 would simply have established a requirement for a minimum airplane type rating curriculum. The FAA believes that an appropriately structured curriculum can permit sufficient flexibility, while at the same time respond to an identified need for more standardized training as the number and sophistication of turbine powered aircraft increase. A sample curriculum is outlined in Advisory Circular No. 61-89D, "Pilot Certificates: Aircraft Type Ratings" and is discussed in further detail later in this preamble.

This rule amends §§ 61.63, 62.157, and part 141 Appendix F and Appendix H to add completion of specific training to the list of requirements for obtaining an airplane type rating. The training will include the maneuvers and procedures of part 61 Appendix A "Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings," as appropriate to the airplane for which the type rating is sought. Pilots who obtain airplane type ratings through other approved programs, such as programs under parts 121, 135, and 141, or training centers operating under exemption, already receive training under approved curricula and therefore already meet the intent of this rule. They will face no additional training requirement.

The FAA has deleted the words "minimum curriculum" and "approved curriculum" from the proposed type-rating amendment in NPRM No. 89-14 to eliminate the requirement for FAA

approval of training curricula. After review of the potential paperwork burden on the public and the additional workload on the FSDO's, the FAA has agreed to delete the FAA approval requirement. By providing a generic curriculum in Advisory Circular format and by specifically requiring that the training include the maneuvers and procedures of part 61, Appendix A, the FAA sees no need for required approval.

Advisory Circular No. 61-89D will be available at FSDO's, and contains a generic curriculum that will serve as a base upon which the school can elaborate in accordance with specific airplane data. The Advisory Circular emphasizes the building block method of learning.

Flight Reviews

Notice 89-14 proposed modification to the flight review requirements of § 61.57 (now covered in § 61.56). Under the proposal, pilots would have been required to complete a flight review in every category and class of aircraft in which they desired to exercise pilot-in-command privileges. The flight review would have consisted of ground and flight training appropriate to the level of certificate held for that category and class of aircraft. Multiengine airplane flight reviews would have sufficed for single-engine airplane reviews.

The proposal was formulated in part on the basis of input from the NTSB and the public. The NTSB, in its Recommendations A-79-96 and A-79-97, focused on multiengine airplanes. The Board cited a higher rate of fatal accidents related to engine failure in light twin-engine airplanes than in single-engine airplanes, and urged the FAA to adopt a requirement that the pilot in command of a multiengine airplane have successfully completed, within the previous 24 calendar months, a flight review in a multiengine airplane.

Some members of the public, prior to publication of NPRM No. 89-14, had advocated that flight reviews be taken in the most "complex" aircraft flown by a pilot. However, certain segments of the public, notably representatives of AOPA, advocated that changes affecting the scope and content of flight reviews be handled through advisory rather than regulatory methods.

The FAA's intent with the proposal was to respond to the increasing demands of aviation technology and the National Airspace System, and issues of pilot training and recurrent training requirements. General aviation pilots increasingly use sophisticated avionics and aircraft, and some representatives of helicopter, glider, and balloon pilot

groups and industry stated that category-specific flight reviews, at least, are necessary. The FAA, as well as the NTSB and segments of the aviation community, have noted with some concern that under current regulations, pilots may never need to seek additional training or evaluation by an instructor in a particular category or class of aircraft after receiving their initial certification. A flight review in a light single-engine airplane or a glider is legally sufficient under the existing rules for exercising pilot-in-command privileges in a sophisticated twin-engine airplane or helicopter.

Public reaction to the proposed revisions in NPRM No. 89-14 was largely negative. Seventy-eight comments were received on the flight review proposal in NPRM No. 89-14. Of those, 64 opposed the amendment. Opponents included AOPA, AOPA ASF, EAA, and NATA. The 13 commenters who favored the flight review proposal in NPRM No. 89-14 included ALPA, ERAU, FlightSafety, GAMA, the Michigan Aeronautics Commission, SSA, and the Wisconsin Bureau of Aeronautics.

The public, while expressing a widespread interest in continuing education for pilots, indicated significant disagreement with the approach set forth in the flight review proposal. Much of the general aviation community indicated that many or most pilots, due to prudence, insurance policy stipulations, or continued strong personal interest in maintaining and improving their piloting skills, already seek more than the legal minimum of recurrent training. However, many of those commenting stated that additional regulatory requirements would constitute a significant burden.

Opposition to the proposal centered on expected costs to individual pilots with multiple category and class certificates and ratings who currently fly different types of aircraft. In addition, a number of commenters expressed the view that pilots sufficiently regulate themselves in terms of recurrent training and do not need additional FAA-imposed requirements. One commenter stated that the FAA had substantially underestimated the number of pilots that would be affected. Based on airman registration data, the commenter said 66,755 pilots had multiple certificates and ratings. The FAA's projected costs were based on an estimate that 55,000 pilots would be affected by the multiple category and class flight review aspect of the proposal.

Although AOPA supported encouraging that a flight review be accomplished in the "most complex

class of aircraft" to be flown, AOPA, AOPA ASF, and EAA commented that there were no safety data to justify the proposal. AOPA ASF said its review of NTSB data indicated that of pilots involved in accidents while flying a multiengine airplane, 80 percent had taken a flight review in a multiengine airplane and only 13 percent had taken a flight review in a single-engine airplane. EAA and AOPA expressed their opinion that the class of aircraft the biennial flight review (BFR) is conducted in should continue to be left to the discretion of the individual and their instructor by mutual agreement. They emphasized that the FAA had not substantiated a need for adopting the proposal.

On the other hand, supporters of the flight review proposal, such as GAMA, stated that differences between categories are too great to allow one to suffice for another. GAMA said that the same applied to aircraft classes. ALPA expressed concern that a pilot could take a single-engine airplane flight review and fly multiengine airplanes.

Several commenters, including some who generally supported most aspects of the proposal, objected to a provision that would have required the flight review training to be appropriate to the level of pilot certificate for that category and class. Other commenters suggested modifications to the proposal, such as rotating flight reviews in different categories and classes, or grouping aircraft in more general classifications for purposes of the flight review. For example, a multiengine airplane flight review would suffice for all other fixed-wing aircraft, including gliders, landplanes, and seaplanes.

The FAA has given extensive consideration to the comments submitted, and acknowledges that further analysis of the flight review issue is needed. As stated in the NPRM, it is difficult to derive actual cost figures for requiring flight reviews in each category and class of aircraft that a pilot exercises pilot-in-command privileges. This is because there are gaps in the registration statistics, and because it is difficult to verify how many pilots with more than one category and class on their certificate actively fly all those categories and classes of aircraft on their certificate.

AOPA ASF's research showing that 80 percent of pilots involved in multiengine accidents had taken flight reviews in multiengine aircraft appears significant. AOPA ASF's written comments did not specify the time period covered, total number of accidents, or other details. In response to EAA, AOPA, and AOPA ASF's comments, the FAA collected

recent data on accidents, incidents, pilot deviations, and near mid air collisions. This data was analyzed in conjunction with NTSB data files on accidents following engine failures or malfunctions in light twin-engine aircraft that occurred from 1972 through 1976. The FAA found that the percentage of fatal light-twin accidents following engine failures is more than four times that for single-engine aircraft. However, recent accident, incident, pilot deviation, and near mid air collision data revealed a significant decrease in each category between 1987 and 1989. In analyzing these decreased numbers, the FAA examined NTSB accident and BFR data. A sampling taken of 1985-1987 NTSB accident records showed that 96 percent of the pilots involved in accidents conducted their BFR's in the same category and class of aircraft that the accident occurred in. The FAA found that 56 percent of those pilots conducted their BFR in the same make and model of aircraft. Furthermore, only 2 percent of the accidents occurred in multiengine airplanes where the pilots had taken their BFR in a single-engine airplane.

Note: There were 3,301 accident records reviewed which represent 42 percent of total general aviation accidents for the years 1985 through 1987.

Therefore, the analysis of the accident data does not support the flight review proposal in NPRM No. 89-14. The FAA believes the decrease in accidents over the period reviewed may be attributed in part to increased voluntary proficiency training. This training can be seen, for example, in the increased number of instrument ratings issued between 1986 and 1988, and in increased participation in the Pilot Proficiency Award Program (also known as the "Wings" Program) over the same period.

Throughout this regulatory review, the FAA has sought to remain responsive to public input on the issues and proposals at hand. Full public participation has been sought and received throughout each step of the process, and the participation was particularly forceful in response to the flight review proposal of NPRM No. 89-14. Based on review of the public comments and data submitted, as well as further analysis of FAA data, the flight review amendment as proposed in NPRM No. 89-14 is not contained in this final rule. After reviewing the accident information, the FAA agrees that available data is insufficient to identify a direct link between safety problems and the expanded flight reviews proposed in NPRM No. 89-14.

The FAA believes in the value of recurrent training, and recognizes

support within the aviation community for regular training. The Pilot Proficiency Award Program (Wings Program), outlined in Advisory Circular No. 61-91F, is open to participation by all pilots holding a private pilot certificate or higher and a current medical certificate. The program provides for both recurrent ground and flight training. As stated earlier, this voluntary training program has gained increased recognition and support from the general aviation community over the past several years. Participation in the program increased by 32 percent from 1986 to 1987, and by 10 percent from 1987 to 1988.

Each phase of the Wings Program may entail some ground training and attendance in at least one safety meeting, and 2 or 3 hours of dual flight training. The safety meeting requirement can be met by attending an FAA or FAA-sanctioned aviation safety seminar, an industry-conducted recurrent training program, or a physiological training course conducted by the FAA, U.S. Air Force, or U.S. Navy. The training profile chosen for the program represents those phases of operation for each category of aircraft that have been identified from accident reports as most likely to produce accidents.

A number of commenters at the public hearings and in written comments received to the docket stated that successful completion of a phase of the Wings Program should satisfy the requirement for a BFR. The commenters believed that the Wings Program should have the same status as that afforded persons who satisfactorily complete a pilot proficiency check for a pilot certificate, rating, or operating privilege, as allowed by § 61.56(e). It is the FAA's desire to encourage further participation in the Wings Program and to accord it the proper significance for meeting recurrent training requirements. Thus the final rule provide successful completion of a phase of the Wings Program satisfies the flight review requirements of § 61.56. Advisory Circular No. 61-91F is being modified to provide for the review of part 91, "General Operating and Flight Rules." The endorsement described in that Advisory Circular must be present in the pilot's logbook or training record to meet the flight review requirements.

During the public hearings held in September and October 1989, the FAA also took note of public requests for increased standardization and guidelines for flight reviews. Several commenters noted that the approach, cost, and quality of flight reviews can vary widely from instructor to

instructor. The FAA agrees that substantially greater uniformity in flight reviews is important, and therefore is including an outline for flight reviews, appropriate to each category and class, in Advisory Circular No. 61-98A, "Currency and Additional Qualification Requirements for Certificated Pilots."

The FAA appreciates the aviation community's participation in this rulemaking process. It is important to note that the FAA seeks and encourages public comment because the agency recognizes the need to obtain data and expertise from as many knowledgeable sources as possible. This input has received and will continue to receive serious consideration.

Stalls and Spins: Pilot Awareness, Training, and Testing

NPRM No. 89-14 included three proposals regarding stall/spin training for pilots and stall/spin training and testing for flight instructors of airplanes and gliders. The spin, a controlled or uncontrolled maneuver or performance in which the glider or airplane descends in a helical path while flying at an angle of attack greater than the angle of maximum lift, was a required training maneuver for pilot certification until 1949. It was deleted from the pilot certification requirements based on the high number of fatal stall and spin accidents, most of which occurred during training. The FAA has since placed greater emphasis on spin avoidance, particularly on training in the avoidance of unintentional stalls or unwanted unusual attitudes. This shift in training requirements resulted in a significant decrease in the number of stall/spin accidents since 1949. NTSB statistics indicate that stall/spin accidents fell from 48 percent of fatal general aviation accidents during the period 1945-48, to 22 percent during 1967-69, and to 12 or 13 percent in the 1970's. The stall/spin proposals in NPRM No. 89-14 constitute an effort to further reduce the already declining incidence of spin-related accidents in general aviation. The amendments contained in this rule will broaden stall and spin awareness training by emphasizing avoidance of unintentional stalls in addition to what is currently the more common procedure of practicing recovery from intentional stalls.

(a) Stall and Spin Awareness Training

The first of the three basic proposals would improve stall and spin awareness ground and flight training for airplane and glider pilots at the recreational, private, and commercial levels. As a result of the creation of the recreational pilot certificate, this final rule broadens

the scope of the amendments to cover recreational pilots. This additional required training will incorporate the most effective types of training discussed in the FAA's 1976 report entitled *General Aviation Pilot Stall Awareness Training Study* (FAA-RD-77-26, September 1976). The study's emphasis is on training involving slow flight with realistic distractions and additional ground training in the subject of stalls and spins.

The new training will incorporate the essential elements of the *General Aviation Pilot Stall Awareness Training Study* in both ground and flight training for airplane and glider pilots, as recommended by the NTSB in its Recommendation A-78-43. As stated in the NPRM, the 1976 study concluded that additional ground training on stalls and spins tended to reduce the occurrence of unintentional stalls and spins. While the study concluded that "additional flight training on stall awareness and/or intentional spin training has a positive influence toward reducing inadvertent stalls and spins," it went on to state that "the most effective additional training was slow flight with realistic distractions, which exposed the subjects to situations where they are likely to experience inadvertent stalls." The study cited some examples of realistic distractions including asking the trainee to radio for weather information, getting something out of the glove compartment, picking up a dropped pencil, getting something from the rear seat, or computing true airspeed or density altitude with a flight planning computer. Indeed, the study found that spin training "might not be feasible."

General reaction to the proposal was favorable. Twenty-four commenters favored the requirement to enhance stall and spin awareness and recovery training, as proposed. All of the principal organizations commenting on the proposal, including ALPA, AOPA, and AOPA ASF favored, in varying degrees, were in favor of the expanded stall and spin awareness training. The Michigan Aeronautics Commission stated, "with additional stall awareness training, is the most germane and realistic method to teaching stalls/spins, without imposing unrealistic demands on general aviation. We believe that mandatory demonstration of spins for private and commercial pilot applicants is not in the best interest of pilots, [flight instructors], pilot examiners, and the general aviation community." SSA concurred with the revisions, but suggested a clarification in §§ 61.105 and 61.125, "aeronautical knowledge," in

which stall and spin awareness will be included.

Ten commenters opposed the stall and spin awareness training amendment. Much of this opposition was based on a preference for reinstating a requirement for actual spin training for all pilots.

SETP, in association with SAFE, was concerned that the NPRM proposal advocated ground training only. They suggested mandatory spin training in an approved utility class aerobatic trainer.

Note of Clarification: The required flight training for pilot applicants includes flight at slow airspeeds with realistic distractions and the recognition of and recovery from stalls entered from straight flight and from turns, but do not include a requirement for actual spin training for pilot applicants. However, actual spin entry, spins, and spin recovery training in flight is required for flight instructor-airplane and flight instructor-glider applicants.

Proponents of more extensive flight training that would include spin training maintained that stall and spin awareness and spin avoidance training make pilots afraid of spins and are ultimately unsafe. One commenter called spin awareness training a "failed concept." Other commenters said that many instructors are afraid of spins and pass that fear along to their students.

NATA, on the other hand, while supporting the NPRM proposal, said it was "disturbing that spins and stalls are always grouped together. In our view, a flight instructor should not demonstrate spins to student pilots, but rather, should concentrate on stall recognition and recovery. What should be stressed in training is the avoidance of conditions leading to a stall so that a spin is not entered into by the pilot."

That concept is the essence of what the NPRM proposed and of the amendment adopted in this final rule. While the FAA has no basis for discouraging qualified instructors from demonstrating spins or training pilots in spin entry and recovery under appropriate circumstances, the FAA is not requiring such demonstration or training. From a safety point of view, the critical element remains heightened awareness of recovery from stalls before a spin develops, as well as recognition of the conditions that can lead to inadvertent stalls. This was the conclusion of the *General Aviation Pilot Stall Awareness Training Study*.

Although the NTSB recommended in 1972 that the FAA evaluate the feasibility of requiring at least minimal spin training of all pilot applicants, the NTSB's statistics indicate that most spin accidents occur at altitudes too low for spin recovery to be effected. The 1972 NTSB *Special Study, General Aviation*

Stall/Spin Accidents 1967-69, found that of 1,261 stall/spin accidents during that 3-year period, 60 percent occurred during takeoff or landing. Of the remaining 40 percent, most were related to acrobatics or low-level flight from which recovery from a fully developed spin would have been unlikely. Only about 7 percent were associated with cruise flight.

Thus, based on the 1976 FAA study and accident trends, this final rule does not require spin training at any certificate level other than flight instructor. The amendments incorporate into the regulation the types of training found to be most effective by the *General Aviation Pilot Stall Awareness Training Study*, namely, slow flight with realistic distractions and additional ground training in the subject of stalls and spins, in addition to current training in stall recognition and recovery. In conjunction with the issuance of this rule, the FAA is preparing Advisory Circular No. 61-67B: "Stall Awareness and Spin Training" to clarify the additional stall and spin awareness training and to ensure that the contents of the *General Aviation Pilot Stall Awareness Training Study*, including the complete list of realistic distractions cited in that study, are made available to all pilots and pilot training schools. Additional requirements for flight instructors are discussed in the following section.

As stated in the NPRM, the rule changes affect §§ 61.105 and 61.125, aeronautical knowledge requirements for private and commercial pilot applicants. Sections 61.107 and 61.127, "flight proficiency requirements" are also affected. The new requirements will also be incorporated into pilot certification under part 141, including appendix A, Private Pilot Certification Course (Airplanes), and appendix D, Commercial Pilot Certification Course (Airplanes). And, even though the proposed amendments in the NPRM referred to private and commercial pilot training, this final rule contains additional amendments to include recreational pilot training. Accordingly, additional amendments are contained here, affecting subpart C, Student and Recreational Pilots, §§ 61.97 and 61.98. This is in keeping with the spirit and intent of the proposed amendments to emphasize the importance of increased stall and spin awareness and training for all airplane and glider pilots.

One such amendment includes the deletion of the word "critically" in § 61.98(a)(5) as applied to slow airspeeds in recreational pilot flight proficiency requirements. This was done for purposes of consistency. Eliminating

the word "critically" leaves the selection of airspeed, below cruise, to the examiner's discretion for safely testing proficiency of training in this area.

(b) Spin Training for Flight Instructors

The other 2 stall/spin proposals presented in the NPRM concerned satisfactory demonstration of spin entry, spins, and spin recovery by flight instructor-airplane and flight instructor-glider candidates. NPRM No. 89-14 proposed a requirement for a logbook endorsement for flight instructor-airplane and flight instructor-glider candidates that states the candidates received training in spin entry, spins, and spin recovery techniques and demonstrated satisfactory proficiency in those maneuvers. At the discretion of the FAA Inspector or Designated Pilot Examiner conducting the practical test, they may accept the logbook endorsement in lieu of an actual demonstration of spin entry, spins, and spin recovery maneuver on the practical test. The FAA also proposed in Notice No. 89-14 that flight instructor-airplane and flight instructor-glider candidates who fail the practical test due to unsatisfactory knowledge of stall awareness, spin entry, spins, or spin recovery techniques would be required to bring an aircraft to the retest that is certificated for spins. The candidate would then be required during the retest to demonstrate satisfactory knowledge and skills on stall awareness, spin entry, spins, or spin recovery techniques.

Eighteen comments were received on the issue of spin training for flight instructors. All favored the requirement for a logbook endorsement showing that flight instructor candidates have received spin entry and recovery training. AOPA also favored continued discretion for inspectors conducting examinations, an FAA policy that will be maintained.

The FAA agrees with SSA's comment that any applicant seeking flight instructor certification in any airplane or glider class should be required to receive spin training. However, SSA also noted that proposed § 61.183(e) did not require spin training to be performed in the aircraft category in which the applicant seeks flight instructor certification. This would have allowed a flight instructor-glider applicant to receive required spin training in airplanes without holding an airplane category rating, as long as the flight instructor providing the training was appropriately certificated and rated in gliders as well as in airplanes. SSA also commented on the reference in

§ 61.183(e) to "an applicant for a flight instructor-airplane single-engine land." SSA said it noted no provision in § 61.5(c)(2) for the inclusion of "land" or "sea" on the flight instructor certificate, and stated that any applicant seeking flight instructor certification in any airplane class or in gliders should be required to receive spin training.

Twenty-three comments were received on the issue of flight instructor candidates demonstrating spins on the retest if the candidate failed the practical test due to deficiencies of knowledge or skills relating to stall and spin awareness. Seventeen commenters favored this amendment and 6 opposed it. ERAU stated that additional instruction and practice in spins with properly logged documentation of the instruction would be more appropriate than requiring a spin demonstration on the retest for flight instructor certification. Other commenters opposed to the amendment cited the limited number of spinable aircraft available and the additional burden of requiring more than one aircraft on the practical test in some cases. The FAA believes that the additional burden of locating a spinable aircraft and requiring more than one aircraft on the practical test in some cases, will be justified by improved safety and assurance that all flight instructors are competent and knowledgeable in the subject of spin entry and recovery. Most commenters appeared to recognize the importance of flight instructor skill and knowledge in the area of stalls and spins.

This rule amends §§ 61.49, 61.183, and 61.187 to require that applicants for flight instructor certificates, airplane and glider, present a logbook endorsement of spin training, and to require a mandatory demonstration of spins on a retest for flight instructor certification if a candidate for the aforementioned certificates failed either the oral or flight portion of the practical test due to deficiencies in stall/spin awareness and associated procedures and techniques. The examiner has the option of requiring spins on the initial flight test and retains discretion to require a spinable aircraft for that test. Thus, while the FAA intends that spin demonstration still may be required on the initial flight instructor test, airplane or glider, a demonstration of spin entry and recovery will be required on the flight instructor retest if the candidate failed because of deficiencies in knowledge or skill related to stalls or spins.

It is the intent of the FAA to ensure that all glider and airplane flight instructors can safely recognize and

recover from spins. This will require the applicant to initiate the entry into the spin maneuver, complete at least one full turn (360 degrees of rotation), and recover using acceptable FAA standards.

This final rule includes several minor changes to §§ 61.183(e) and 61.187 as proposed in the NPRM that clarify the intent of the rule. The rule specifically requires flight instructor applicants, airplane and glider, to have accomplished spin training in an aircraft of the appropriate category that is certificated for spins. Multiengine airplanes may be used for this required spin training by multiengine flight instructor-airplane applicants, only if the airplane is spin-certificated. Such airplanes exist, but are not common.

Therefore, the FAA has not included a class requirement for spin training, thus allowing multiengine flight instructor-airplane candidates to receive their spin training in single-engine, spin-certificated airplanes. The original proposal in NPRM No. 89-14 would have required only applicants for a flight instructor-airplane single-engine land or flight instructor-glider certificate to present the logbook endorsement from an appropriately certificated and rated flight instructor. Under that proposal, an applicant for a flight instructor certificate intending to take the practical test in a multiengine airplane, having never accomplished a previous flight instructor practical test in a single-engine airplane, conceivably might have by-passed this requirement. This final rule is, therefore, clarified to reflect the FAA's intention that the required logbook endorsement reflect spin training in the category in which the applicant seeks certification. These modifications respond to the comments and queries from SSA cited earlier. "Single-engine land" has been eliminated from §§ 61.49(b) and 61.183(e) and replaced with "in an aircraft of the appropriate category that is certificated for spins." This clause was also added to proposed § 61.187. The endorsement must certify that the flight instructor has given the applicant training in spin entry, spin, and spin recovery in an aircraft of the appropriate category that is certificated for spins and has found the applicant competent and proficient in those training areas.

In § 61.183(e) the word "those" was changed to "all" in describing the items in which instruction is required by § 61.187. This modification eliminates any ambiguity about which items are required for flight instructor training. For certification purposes, however, it is the

FAA's intention to maintain the current policy of allowing examiner discretion on the practical test with regard to spin demonstration. Section 61.183 has been amended to make this policy clear in the regulation.

Pilot Schools—Chief Instructor Availability

NPRM No. 89-14 proposed modifications to §§ 141.35 and 141.85 to define more clearly the supervisory role of chief instructors and to clarify the requirement for chief instructor availability during the time that instruction is given for an approved course of training. The FAA has noted different interpretations of what availability means for chief instructors or their assistants at part 141 schools. The FAA believes that a person can be on duty and immediately "available" for the purpose of supervisory duties via various common electronic means, such as telephone, radio, and paging systems, without hampering safety. These changes were intended to reconcile potential conflicts in chief instructor duties while maintaining stringent standards for designating chief instructors under part 141.

A total of 17 comments were received on the proposal to clarify chief instructor availability requirements to include electronic means. All comments, including those from principal organizations, indicated overwhelming acceptance of this proposed amendment. Comments cite the elimination of an undue burden on industry and the use of modern communications to allow easy contact with the chief and assistant chief instructor if needed. AOPA and EAA agree that someone of authority should be available at all times when flight instruction is in progress, but physical on-site availability is unnecessary. ERAU stated that chief instructor availability through electronic means will adequately cover any situation in which direct involvement becomes necessary.

This final rule changes §§ 141.35 and 141.85(b) to clarify the availability of the chief and assistant chief instructor to include electronic means. Availability in the local flying area by telephone or radio while instruction is being given would satisfy the intent of the rule and provide a favorable training atmosphere. This change to § 141.85(b) serves to define more clearly the chief instructor's role as supervisory, rather than requiring the chief instructor's physical presence at all times during which instruction is being given. This change is designed to enhance efficiency and align

the FAR with FAA policy as expressed in FAA Order 8710.5 and Advisory Circular 141-1.

Satellite Bases

NPRM No. 89-14 proposed to amend § 141.91(a) to eliminate the 25-nautical mile maximum limit on the distance between satellite bases and the main operations base. The intent of § 141.91(a) has been to ensure that a chief instructor is readily available for consultation. The proposed amendment to § 141.91(c) requires the designation of an assistant chief instructor in charge at each satellite base.

The FAA has granted exemptions from § 141.91(a) when petitioners demonstrated that more distant satellite bases could be supervised in a manner that satisfied the intent of the rule without adversely affecting safety. As a result of experience in a number of exemption cases, the FAA believes that improvements in transportation and communications systems no longer require that pilot schools' operations be confined to satellite bases within very limited distances from the main base. It is feasible for pilot schools to establish satellite schools and ensure adequate home base control, including supervision by a chief or assistant chief instructor as well as FAA surveillance.

Twelve comments were received on this issue. All commenters expressed support of the proposed amendment. NATA noted that by allowing satellite bases to be established more than 25 nautical miles from the main operations base, flight schools will gain flexibility and the quality of training may be enhanced by exposing students to a wider variety of operating environments. NATA also expressed concern about the impact this amendment could have on economic activities at airports by allowing a flight school to operate a satellite base on a regular basis without an operating agreement with that airport and/or one of its tenants. ERAU stated that the FAA will have to provide additional guidance for the designation of responsible district offices and approval of training course outlines (TCO's) when a school establishes one or more satellite bases.

This final rule modifies § 141.91 by eliminating the 25-nautical mile maximum limit on the distance between satellite bases and the main operations base, and by requiring the designation of an assistant chief instructor in charge at each satellite base. Policy will be set by a central chief instructor and standards set forth in the school's master TCO will be maintained. The assistant chief instructors in charge at the satellite base will be responsible for remaining

"available" for supervisory purposes at the satellite bases to which they were assigned, either in person or via the electronic or telephonic means discussed in the changes to § 141.85(b).

Chief and Assistant Chief Flight Instructor—Experience Criteria

The last rulemaking action presented in NPRM No. 89-14 proposed eliminating the need for a chief flight instructor candidate who meets all other criteria to have instructed 100 hours in the preceding year, and proposed reducing by one-half the prerequisite hours and years of experience required of assistant chief flight instructor applicants. The NPRM also proposed adding a new section to separately list experience criteria for assistant chief flight instructors.

These amendments recognize the need for chief flight instructors and assistants who can meet demands as senior management personnel as well as flight instructors. Requiring recent instruction experience impedes more senior personnel whose substantial experience includes supervisory experience from designation as chief flight instructors. Exemption activity has indicated the value of such personnel, and the FAA believes it is desirable to stress the supervisory aspect of the chief flight instructor's job.

Given the largely supervisory nature of the chief flight instructor job, it is important to facilitate designation of assistant chief flight instructors to whom responsibility can be delegated. The present total experience time requirements are the same for chief and assistant chief flight instructors. The FAA believes it is possible to halve the total required hours for assistant chief flight instructors, who will continue to face stringent FAA-administered oral and flight examining procedures.

Twenty-one comments on the chief and assistant chief flight instructor experience criteria proposal were received. Nineteen commenters, including the principal organizations, favored the proposal in the NPRM and two commenters opposed it. AOPA ASF, NATA, and ERAU said they believe that the 100-hour requirement for chief flight instructor candidates constitutes an obstacle to highly qualified candidates who have substantial and varied flight experience and who meet all other criteria. ERAU suggested that the FAA, in revising chief flight instructor qualifications, should have considered the requirements of § 141.79(c) and eliminated the requirement for annual refresher courses which are designed primarily for the least active flight instructors. AOPA and EAA said they

believe that reducing experience criteria for chief and assistant chief flight instructor candidates will provide a stepping stone earlier in a pilot's career and will enhance the status of flight instructors. One commenter noted that the status of flight instructing as a profession, and not as an early stepping stone to the airlines, needs to be enhanced. The commenter supported the NPRM proposals as a means of providing an opportunity for greater responsibility earlier in a flight instructor's career. Commenters opposed to the amendment said they find present criteria adequate.

Requests to allow the assistant chief flight instructor to do phase checks have been received from the public. Under the current rule, an assistant chief flight instructor can be designated to do phase checks. The chief flight instructor can designate almost all duties to a qualified and designated assistant chief flight instructor. Assistant chief flight instructors are subject to the same stringent requirements as chief flight instructors and will continue to be required to take a flight test given by the FAA. The amendment reduces experience requirements, but maintains a high standard of proficiency for assistant chief flight instructors.

The comments received supported the NPRM, and after due consideration, no changes to the proposal have been made. The final rule amends § 141.35 by eliminating the 100-hour recency of experience requirement for chief flight instructors. The final rule establishes flight time and experience requirements for assistant chief flight instructors to one-half that of chief flight instructors. This rule also establishes the requirement that chief flight instructor candidates hold a valid flight instructor certificate and meet pilot-in-command recent flight experience requirements as set forth in § 61.57. Section 141.36 is added to separately list such criteria for assistant chief flight instructors. These criteria are different enough from those for chief flight instructors to warrant a separate listing. The FAA believes that safety standards can be maintained and that flight training operations can be facilitated by reducing the total hour requirements that assistant chief flight instructors must meet. The additional requirement for assistant chief instructors at satellite bases provides increased opportunity for professional development. The purpose of this rule is to emphasize the supervisory responsibility of the chief instructor over the activities of instructors, assistant chief instructors, and other aspects of school operations.

Additional Changes

SSA pointed out that the current wording of §§ 61.105(b)(4) and 61.125(c)(4) implies that glider pilots must be familiar with both ground and aero tow procedures. They went on to point out that ground launches are used at relatively few glider sites nationwide, and that private and commercial glider pilot privileges are limited to the launch method satisfactorily demonstrated on the flight test. The FAA agrees with the comment, and this final rule modifies those sections to include "ground and/or aero tow procedures as appropriate." This modification clarifies that the requirement applies only to the type of tow in which the pilot has been certificated on the practical test. Although this change was not contained in the NPRM, the FAA believes it is appropriate to make the change at this time, because it does not increase requirements and is in conformance with standard industry practice.

Editorial Changes to the NPRM

This final rule includes several non-substantive editorial changes made to NPRM No. 89-14, and to affected paragraphs of the current rule that have been modified as a result of this rulemaking action but that were not included in NPRM No. 89-14. These include the addition or deletion of articles such as "an," punctuation, and correction of typographical errors.

Obsolete Dates and Gender References

The parts 61 and 141 sections from which obsolete dates and gender references have been removed are:

| Obsolete dates (§§) | Gender references (§§) |
|-----------------------------|----------------------------|
| 61.1(b) | 61.49. |
| 61.58(a) | 61.57(a)(1),(a)(2),(b)(2). |
| 61.71(b) | 61.58(a). |
| 61.113(a),(b),(d),(e) | 61.71(b). |
| 61.131(a),(b) | 61.193. |
| 61.195(b) | 61.195(b). |
| 61.201(a) | 61.201(a). |

141.29(a),(b)
141.35(a)(1),(a)(1)(i),(a)(2)
141.85(b)

Paperwork Reduction Act Approval

Information collection requirements for Parts 61 and 141 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Part 61, §§ 61.13 through 61.197, and part 141 have been assigned OMB control numbers 2120-0021 and 2120-0009, respectively.

Regulatory Evaluation Summary

The FAA's analysis indicates that the amendments in this revision to parts 61 and 141 would not have a significant economic impact on the public or any level of government on an annual basis. The amendments are intended to update certain requirements, and in some cases relax requirements when compensating factors can ensure that safety standards will be maintained. This section summarizes the conclusions of the regulatory evaluation of the comparative costs and benefits of the amendments. The complete Regulatory Evaluation, Regulatory Flexibility Determination, and International Trade Impact Assessment have been placed in the docket.

The FAA concludes that the amendments to parts 61 and 141 are economically justified. Benefits stemming from averted accidents due to the amended rules would compensate for the additional training expenditures resulting from the revised requirements. The FAA projects the ratio of benefits to costs to be approximately 1.6:1. Over a 10-year period, estimated discounted costs of implementing the amendments would total \$51.8 million, compared with an estimated discounted potential savings of \$85.2 million in averted accidents. Many of the amendments would have little impact on training costs or pilot school operational expenditures other than to help improve efficiency. The amendments to part 141 update the rules on pilot school operations and relax certain requirements which no longer serve their original purposes. The economic effects of the amendments, if any, would favor the schools. In no case are any adverse effects on safety foreseen.

Section 61.31(g) Tailwheel Airplanes

As the general aviation fleet has been modernized, fewer pilots receive training in tailwheel airplane operations. In response to this trend, the change in § 61.31(g) requires a one-time flight instructor endorsement indicating that a pilot is competent to operate tailwheel airplanes. The endorsement certifies that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings unless the manufacturer has recommended against such landings, and go-around procedures.

In NPRM No. 89-14, the FAA noted that recent statistics show that tailwheel airplanes continue to experience a disproportionate share of general aviation accidents. In its comments on the NPRM, the Aircraft Owners and Pilots Association (AOPA) provided accident data for the years 1983-1988.

According to AOPA, 6 percent of tricycle gear airplanes and 5 percent of tailwheel airplanes were involved in accidents during the landing phase of flight. AOPA also stated that 9 percent of tricycle gear airplanes and 12 percent of tailwheel airplanes were involved in accidents during the takeoff phase of flight.

Another commenter to NPRM No. 89-14 stated that the analysis should focus on accidents that occur in the taxi, takeoff, and landing phases of flight. The commenter stated that the primary problems of tailwheel airplanes occur on the ground and during takeoff and landing.

These comments prompted the FAA to reexamine the accident statistics for tailwheel airplanes versus tricycle gear airplanes (piston powered only in both types) in the taxi, takeoff, and landing phases of flight.

This re-examination of accident data confirmed the previous conclusions that tailwheel airplanes have a disproportionately high accident rate. For example, between 1983 and 1988, tailwheel airplanes had an average rate of 14.46 accidents per 1,000 active tailwheel airplanes as opposed to tricycle gear airplanes which had an average accident rate of 9.05 accidents per 1,000 active tricycle gear airplanes. The average accident rate per 1,000 tailwheel airplanes from 1983 to 1988 is approximately 60 percent higher than for tricycle gear airplanes.

The FAA believes that the required endorsement would affect only pilots changing from tricycle gear to tailwheel airplanes. Pilots who initially train in tailwheel planes are already required to receive flight instructor endorsements for solo practice and cross-country operations, including an endorsement of pilot competency in airport and traffic pattern operations. The rule change is intended to preclude a certificated pilot from making a transition from tricycle gear airplanes to tailwheel airplanes without receiving sufficient training.

One commenter noted that in the initial regulatory evaluation, the FAA used a ratio based on the number of student pilots to estimate the number of pilots who transfer to tailwheel airplanes. The commenter felt that this was not an accurate ratio because very few pilots take primary training in tailwheel airplanes. In response to this comment, the FAA has researched additional data on the number of tailwheel airplanes and pilots who may be affected by the required endorsement by estimating the number of tailwheel airplanes used primarily for instruction.

The FAA estimates that of the total number of pilots who make a transition to tailwheel airplanes each year, 4,500 would incur additional costs as a result of the amendment. Not all transitioning pilots have been considered for purposes of this evaluation because public response, including from commenters opposed to the requirement, generally agreed that this training is already standard practice in general aviation. Therefore, relatively few pilots should actually be affected by the rule in practical terms. Using average operating costs of \$40 per hour for a single-engine piston tailwheel airplane, \$20 per hour for a flight instructor, and 5 hours training time, it would cost each pilot an estimated \$300 to obtain this training and endorsement. This would not include recurrency training in operations and maneuvers not unique to tailwheel airplanes for a pilot who is out of practice, because such training is not discussed in this amendment. If 4,500 pilots per year received transition instruction as a result of the rule, the annual implementation cost of the amendment would be \$1.35 million in 1989 dollars. This would be equivalent to the savings realized if 0.6 fatal accidents were prevented each year as a result of the amendments (single-engine piston airplane, 1.5 fatalities per accident). If the rule reduced tailwheel accidents by 2 percent per year, the benefits in 1989 dollars would be about \$15 million, nondiscounted, and \$11.25 million, discounted, over 10 years. This would average \$1.23 million discounted per year. Over 10 years, the discounted benefits-to-cost ratio would be 1.1:1.

Section 61.31(f) High Altitude Operations

Amended § 61.31(f) requires completion of specified flight and ground training by pilots intending to act as pilot in command of pressurized airplanes with service ceilings or maximum operating altitudes, whichever is lower, above 25,000 feet MSL. Most airplanes that fit this description also require type ratings; thus the high altitude training would be incorporated into the type rating training requirement in § 61.63. Section 61.31(f) is designed to extend the high altitude training to pilots making a transition to reciprocating engine and turboprop airplanes that do not require type ratings but that are pressurized and operate at high altitudes. The requirements under § 61.31(f) are analyzed in relation to airplanes that do not require type ratings. This training was specifically omitted from the part 141 appendixes A, F, and H proposals in NPRM No. 89-14.

Based on the general aviation fleet and airman statistics, the FAA estimates that 1,250 pilots annually make a transition to airplanes that operate at high altitudes but do not require type ratings. A special 3-hour ground training session for high altitude flight plus 1 hour of flight training might typically cost a pilot \$450. This cost estimate takes into account the possibility that a pilot might accomplish the required flight training in a simulator and also the development costs for the high altitude training. Commenters to NPRM No. 89-14 who opposed the amendment noted that this type of training is frequently a condition for pilots to obtain insurance. The FAA acknowledges that a growing number of pilots are taking advantage of transition programs offered by manufacturers and major training enterprises, thus reducing the number of pilots who would require the additional training as a result of the amendment. The FAA estimates that each year one-half (625) of these pilots may be affected by the additional training as a result of this amendment; thus, the cost increase in 1989 dollars would be approximately \$281,250.

If the additional training requirement prevents 0.5 percent of the current number of fatal turboprop airplane accidents for which type ratings are not required, the savings in 1989 dollars would be about \$300,000 per year. The FAA projects that over a 10-year period, the discounted benefits-to-cost ratio would be 1.2:1.

Section 61.63 Type Rating Training

Amendments to §§ 61.63(d) and 61.157(f) and part 141 appendix F require training for pilots seeking type ratings. These amendments require completion of training appropriate to the airplane for which the type rating is sought. Most airplanes for which type ratings are required are pressurized and have service ceilings or maximum operating altitudes, whichever is lower, above 25,000 feet MSL, and thus pilots who receive type rating training for these aircraft must have received the high altitude training required by § 61.31(f) prior to acting as pilot in command. Therefore, the cost of the type rating training required under §§ 61.63(d) and 61.157(f) and part 141 appendix F examined here includes costs associated with the high altitude requirement for airplanes requiring type ratings.

Implementing the amendments could increase training expenses for pilots or their employers, which in many cases are corporate flight departments and other operations under part 91. Advisory Circular No. 61-89D, which is being issued in conjunction with this

amendment, contains a generic curriculum that will serve as a base upon which schools can elaborate in accordance with specific airplane data.

In *FAA Aviation Forecasts Fiscal Years 1989-2000*, the FAA forecasts that the turbine-powered segment of the fixed wing fleet will grow more quickly than the piston fleet during the next decade. From 1980 to 1988, the piston airplane fleet grew from 193,500 to 194,400 airplanes. However, the general aviation turbine-powered fleet grew from 6,200 in 1980 to 9,700 in 1988, an increase to 4.8 percent of the total fixed wing fleet. The FAA projects that by the year 2000 there will be 15,600 turbine-powered airplanes making up 7.8 percent of the total fixed wing fleet. Approximately 2,000 piston-powered airplanes requiring type ratings are currently estimated to be in the general aviation fleet. This number is less than 21 percent of the current number of general aviation turbine-powered airplanes and is 13 percent of the number of turbine-powered airplanes projected for the fixed wing fleet in the year 2000. Furthermore, a significant number of those piston-powered airplanes are expected to be out of service and more are expected to be retired gradually. Thus, the rule primarily pertains to turbine-powered airplanes.

The FAA expects the demand for pilots with type ratings to increase over the next decade. In addition, the FAA expects the size of air carrier and regional/commuter airlines fleets to increase. Airlines are expected to face rapid pilot attrition during the next 10 to 15 years. In 1988, 27 percent of ATP holders were age 50 or older, and 43 percent were at least 45 years old. The FAA believes that new airline pilots will increasingly be drawn from the general aviation community. The FAA amendments are intended to ensure that this surge in type-rated pilot hiring will take place within a context of proper training.

The FAA's estimates show that approximately 11,000 general aviation pilots hold type ratings. Due to a large turnover in general aviation, an estimated one-third (33 percent), or approximately 3,600 pilots, may receive new type ratings each year. Based on current costs of type ratings courses offered by some of the major training organizations, the average cost of the training is estimated to be \$6,000 per pilot. The FAA estimates that approximately 800 type ratings are issued each year to pilots whose present training does not meet the standards of this proposal, and who would be

required to receive the additional training. The FAA estimates that these 800 pilots could require some additional ground and flight training at \$1,000 per type rating. The FAA estimates that the net total additional training cost of requiring pilots to receive training prior to issuance of an airplane type rating will be approximately \$800,000 in 1989 dollars. A 1.5 percent reduction in the fatal accident rate of general aviation turboprop airplanes that require a type rating and of turbojet airplanes would lead to a savings/benefit of \$600,000. The FAA projects a 10-year discounted benefits-to-cost ratio of 1.1:1.

Flight Review

NPRM No. 89-14 proposed modifications to the flight review requirements of § 61.57 (now covered in § 61.56). Under the proposal, pilots would have been required to complete a flight review in every category and class of aircraft in which they desired to exercise pilot-in-command privileges. As noted earlier, based on a review of the public comments and data submitted, the flight review amendment as proposed in the NPRM is not contained in the final rule. However, comments were received on the cost and safety data presented in NPRM No. 89-14.

One commenter noted that the number of pilots who hold more than one category and class rating estimated by the FAA in the notice was incorrect. Using information in the *U.S. Civil Airman Statistics* and ratios based on the fleet size, the FAA had estimated that 55,000 pilots would be affected by the proposed rule. The commenter, using airman statistics and other data, estimated that 66,755 pilots would be affected by the proposed rule. Although the commenter also noted that the FAA statistics lacked detailed information, the difference between the two estimates stemmed largely from different assumptions about how many pilots certificated in more than one category and class actively fly all the aircraft for which they are certificated.

Research done by AOPA ASF suggesting that 80 percent of pilots involved in multiengine accidents had taken flight reviews in multiengine aircraft appears significant; however, AOPA ASF's written comments did not specify the period covered, the total number of accidents, or other details. NTSB 1985-1987 accident statistics show that 96 percent of the pilots involved in the 3,301 accidents reviewed conducted their BFR's in the same category and class of aircraft that the accident occurred in. Fifty-six percent of those pilots conducted their BFR in the same make and model of aircraft, while

only 2 percent of the accidents occurred in multiengine airplanes where the pilots had taken their BFR in a single-engine airplane.

AOPA estimated that the cost of each flight review would range from \$75 to \$250, with a total biennial cost of \$650 to more than \$1,200 for pilots with multiple category and class ratings. In its Initial Regulatory Evaluation, the FAA estimated that each flight review would cost between \$110 and \$520. However, the FAA has determined that the original proposal is not supported by available accident data. Therefore, that proposal is not contained in this final rule. Instead, and in response to public comment, the FAA is amending § 61.56 to permit pilots to substitute completion of a phase of a pilot proficiency award program for a flight review.

The FAA believes that the amendment to § 61.56 allowing satisfactory completion of a pilot proficiency award program (or any phase of such a program) to fulfill the requirement for a flight review would not impose any economic burden on pilots since no additional requirement is being imposed. The number of pilots who have satisfactorily completed a phase of the FAA's current Pilot Proficiency Award Program has risen from 9,217 pilots in 1983 to 12,109 pilots in 1989. By not requiring participating pilots to incur the cost of participation in both the Pilot Proficiency Award Program and a flight review, the FAA believes that this amendment could be an economic benefit for participating pilots. Although many pilots who participate in the Pilot Proficiency Award Program may combine some of the flight instruction phase requirements with the flight review requirement, those who do not would save the cost of the flight review. Assuming approximately 10,000 pilots participate annually in the Pilot Proficiency Award Program, of which 2,500 do not combine their flight review with that program, total savings estimated for those pilots would be \$375,000, given that the average cost of a single-engine airplane flight review is \$150. Furthermore, this amendment could encourage more pilots to participate in the Pilot Proficiency Award Program with a potential safety benefit for all general aviation.

Stall and Spins: Pilot Awareness, Training, and Testing

Stall training is currently an integral part of pilot training. Studies have shown, however, that there is a need to enhance pilot awareness of the relationship between stalls and spins, and to improve understanding of the spin hazard in general. A 1976 study

done for the FAA also distinguished between the stall maneuvers routinely practiced in flight training, and scenarios involving pilot distraction that can lead to inadvertent stalls. These concerns are addressed in a series of amendments to §§ 61.97, 61.98, 61.105, 61.107, 61.125, 61.127, 61.183, 61.187, and part 141, Appendixes A and H. The changes would add airplane and glider stall and spin awareness and recovery techniques to the areas of aeronautical knowledge and basic operations covered in student, recreational, private, and commercial pilot training.

The intent of the amendments is to increase pilot awareness of the stall/spin hazard. The likely effect will be a modification of ground instruction programs to reflect the insights of the FAA's 1976 *General Aviation Pilot Stall Awareness Training Study* (FAA-RD-77-26, September 1976) and the addition of up to one hour of flight training to recreational, private, commercial, and flight instructor pilot programs. The cost increase resulting from the proposed expansion of stall/spin awareness training would be moderate because the FAA is not incorporating the element of spin training, which was included in the 1976 study.

The study suggested two flights of approximately 1 hour each, including spin training, and 2 hours of additional ground school. This ground training, or variations of it, could be incorporated into most existing ground training programs by modifying those programs rather than by lengthening them. Under the amendments, flight instructors might spend an additional hour discussing stalls and spins with students. The stall awareness study also proposed two additional 1-hour flights that would include situations leading to inadvertent stalls/spins, stall and spin practice and avoidance, and full spin training. The FAA amendment excludes the spin training component, which alone would take nearly 1 of the 2 hours. Therefore, additional training for a typical student might include approximately 1 hour of ground training and 1 hour of dual flight instruction. The cost of the additional training would be approximately \$85 for airplane students and \$65 for glider students.

Based on the average number of certificates issued to glider-only pilots from 1984 to 1988, the total expenditure for glider pilots is estimated to be \$28,700 per year. Based on the average number of private, commercial, and initial flight instructor certificates issued from 1984 to 1988, the total expenditure for recreational, private, commercial, and flight instructors would be \$4.45

million, assuming all other initial certificates were obtained in airplanes rather than in helicopters or other aircraft. (Because the recreational pilot certificate did not become effective until August 31, 1989, for the purposes of this regulatory evaluation, the number of recreational pilots that will be affected was included in the average past issuances of private pilot certificates.)

The results of the FAA's stall awareness study are available in Advisory Circular 61-67A. Further dissemination of this information can be in the form of other training materials or within routine work programs since no additional research is required. The stall awareness study's main contribution was that it emphasized the need for additional training in stall and spin avoidance and the need for additional flight training in slow flight with realistic distractions.

Stall awareness training is effective. After the United States dropped the spin training requirement in June 1949 in favor of increased stall training, stall/spin accidents dropped dramatically. Although other factors such as improved stall warning devices undoubtedly contributed to this decrease, several studies indicate that the revised training approach was a main factor in reducing stall/spin accidents. In the 4-year period from 1945 to 1948, stall/spin accidents accounted for 48 percent of all fatal accidents. This proportion dropped to 27 percent from 1965 to 1968. The NTSB conducted a study of the period from 1967 to 1969, and found that stall/spin accidents caused 22 percent of all "fatal occurrences." That study, the *Special Study General Aviation Stall/Spin Accidents, 1967-1969* (National Transportation Safety Board AAS-72-8, September 13, 1972), examined the 1,261 stall/spin accidents recorded for the period and noted that, while they accounted for only 8 percent of the total number of accidents, they caused 23 percent of the fatalities or serious injuries.

A total of 2 single-engine piston airplane accidents would have to be prevented per year to realize savings equal to the cost of implementing spin training, as measured in the statistical value of fatal and nonfatal accidents in which stall/spin was a main cause or factor. In the 5-year period from 1983 to 1987, an average of 33 fatal accidents and an average of 57 fatalities occurred per year. If the improved stall/spin training leads to a 10 percent improvement in the stall/spin accident rate, a total of 3.3 fatal accidents and 5.7 fatalities would be averted. Assuming that all of the airplanes were

reciprocating single-engine airplanes rather than a mix of multiengine and turbine-powered airplanes, the potential savings could be at least \$8.6 million in 1989 dollars. The FAA projects that over 10 years the discounted benefits-to-cost ratio would be 1.9:1.

Other amendments regarding stall and spin awareness training modify §§ 61.183 and 61.187, which govern areas in which flight instructor candidates must receive training and be tested. The amendments require flight instructor candidates, airplane or glider, to receive training and demonstrate proficiency in stall awareness, spin entry, spins, and spin recovery techniques. The amendments make the logbook endorsement of spin competency an eligibility requirement rather than an option for candidates seeking the flight instructor ratings affected by these amendments.

Currently, this endorsement is optional for those flight instructor candidates, particularly airplane flight instructor candidates, who perform their flight tests in airplanes not approved for intentional spins. FAA guidelines now permit those candidates to present the endorsement in lieu of demonstrating a spin on their flight tests. The stall/spin training, while already required under FAA guidelines, is given greater emphasis in the amended rules, but the amended rules do not substantially alter the procedures and maneuvers that the flight instructor candidates are currently expected to cover. The FAA believes that these changes in §§ 61.49, 61.183, and 61.187 will significantly increase flight instructor awareness and understanding of the stall/spin issue. However, the FAA believes that only the mandatory spin demonstration required under § 61.49 carries with it a potential cost implication.

Amended § 61.49 will require flight instructor applicants in airplanes or gliders to demonstrate spin entries, spins, and spin recoveries on their flight tests if they have previously failed the oral or flight portion of a test due to deficiencies in the stall/spin area. The retesting requirement is unlikely to have an important economic impact. In 1988, 6,121 applicants took initial flight instructor examinations, the majority of which was probably in airplanes. Twenty-one percent of those applicants failed. If as many as 10 percent of the pilots who failed in 1988 failed because of deficiencies in stall/spin knowledge, they would collectively spend about \$2,500, excluding additional examiner fees, to meet the retesting requirement. This figure is based on a \$40 airplane cost and 30 minutes for the spin

demonstration plus flight time to and from practice areas. The cost of the bulk of the flight test, which must be taken in a complex airplane and includes other tasks, is not included in the additional costs because those tasks are not subject to this amendment. If this additional requirement leads to even a 0.1 percent improvement in stall/spin accidents, the annual savings would be approximately \$86,000. Based on these estimates, the ratio of benefits to costs would be approximately 34.3:1.

Flight Instructor Authorizations

Amendments have been made to § 61.193 that include authorizations for flight instructors to provide the endorsements required under amendments to §§ 61.187, 61.31, 61.157, and/or 61.183. No additional cost is associated with the amended § 61.193, however.

Chief Instructor Availability

Section 141.85 is amended to clarify that chief instructors on duty do not necessarily have to be present at their flight school while instruction is being given. The change is designed to enhance efficiency and align the FAR with FAA policy as expressed in FAA Order 8710.5 (June 20, 1979) and Advisory Circular 141-1A (August 29, 1974). The measure involves no implementation costs.

If any changes in school operations do occur as a result of this amendment, it would be to permit schools more efficient use of personnel. However, the amendment would have little if any impact since present industry practice appears to be based on FAA Order 8710.5 and Advisory Circular 141-1, which state that the chief flight instructor need only be available for consultation at the school's base of operations.

Satellite Bases

The amendment to § 141.91 eliminates the 25-nautical mile maximum distance limit for establishing satellite school operations bases as long as an assistant chief instructor is designated for each satellite base, and is available for consultation when instruction is given at the satellite base.

The FAA does not expect this change to compromise safety because the amendment ensures adequate supervision. If the schools choose to take advantage of the rule change, this presumably would be an informed decision made on the basis of expected costs, revenues, and potential profits.

Potential long-term benefits include promoting economies of scale in school

operations, permitting development of regional and national chains of schools, utilization of master TCO's and avoiding the need for multiple Part 141 certificates.

Chief and Assistant Chief Flight Instructors—Experience Criteria

Criteria for designating both chief and assistant chief flight instructors have been substantially modified by amending § 141.35 and creating § 141.36. These amendments eliminate the 100-hour recent instruction requirement for designating chief flight instructors, and reduce by half the current total prerequisite times for assistant chief flight instructors.

The amendment's rationale is that requiring recent instruction experience may prevent senior personnel with substantial experience, including supervisory experience, from designation as chief flight instructors. Exemption activity has revealed the value of such personnel, and the FAA believes it is desirable to stress the supervisory aspect of the chief flight instructor's job.

Given the largely supervisory nature of the chief flight instructor's job, it is important to facilitate the designation process for assistant chief flight instructors to whom responsibility can be delegated. The present total experience time requirements are the same for chief and assistant chief flight instructors. Under these conditions, flight instructors often quit instructing after acquiring hours but before they meet these minimum experience requirements. The FAA believes that the total required times can be reduced by half for assistant chief flight instructors, who will continue to face stringent oral and practical examining procedures.

Given the safeguards of the proposed supervisory arrangement with the chief flight instructor and the current examining requirements, safety standards should not be endangered. In addition, concrete economic benefits may result in terms of reduced time in pursuing exemption alternatives, and reduced or eliminated program interruptions caused by the inability to fill vacancies. However, it does not seem feasible to attempt to quantify the amount of time and expense saved by avoiding exemption requests.

International Trade Impact Analysis

This final rule will not have any significant impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. The rules primarily affect the domestic activity and operations of individual pilots and pilot

schools. The FAA believes that the rules will not affect part 141 schools in the training of foreign citizens who accomplish pilot training in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a large number of small business entities. The size threshold for pilot schools is 10 employees, as set forth in the Department of Transportation (DOT), FAA Order 2100.14A, September 16, 1986. The threshold for annualized cost levels for pilot schools is \$1,115 in 1989 dollars.

FAA Advisory Circular 140-2S, July 10, 1987, identifies approximately 830 pilot schools certificated under FAR part 141 as of June 2, 1987. The FAA believes that a significant number of these schools employ fewer than 10 persons and are, therefore, small business entities, and that more than one-third of these schools would be affected.

However, these amendments would have minimal economic impact on the pilot schools. No comments received on NPRM No. 89-14 implied that there would be a significant economic impact on pilot schools. Modification of training course materials or internal operational procedures may incur minor costs; however, costs exceeding \$1,115 are not anticipated. Moreover, the FAA believes that some schools may realize cost reductions as a result of some of the amendments to part 141. In the past, for example, flight schools may have had to expend a certain amount of additional time and expense advertising for and interviewing chief instructor candidates. Modifications to the requirements for chief and assistant chief instructors are expected to facilitate school operations. Some savings may accrue to the schools as a result of the measures. Small schools may even gain revenue as a result of the increased training requirement. However, because of inadequate data on market shares, it is not feasible to describe how much additional revenue these businesses would earn.

The FAA has sought to respond to the needs of these entities within the limits permitted by safety considerations. The FAA has reviewed the rules affected by these amendments to determine the extent to which requirements could be relaxed without compromising safety, and the FAA believes that these

amendments are as relaxed as possible without compromising safety.

Other amendments are expected to have an impact on individual pilot training and recurrent training costs. The FAA believes that these amendments reflect common practice within the industry and will, therefore, not impose a significant burden on firms that may be characterized as small entities. Some small companies that employ pilots flying professionally under part 91 may face additional training costs as a result of the amendments. However, small companies rarely have corporate flight departments, and the cost of determining how many such companies would be affected by the amendment would probably be out of proportion to the actual number of companies involved.

The FAA certifies, that under the criteria of the Regulatory Flexibility Act of 1980, the amendments to the regulations will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

Federalism Implications

The amendments in this final rule would not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these amendments would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Determination and the International Trade Impact Analysis, the FAA has determined that these amendments do not qualify as a major rule under Executive Order 12291. In addition, the FAA certifies that these amendments will not have a significant economic effect, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of these amendments, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the

regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT".

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 141

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Business and industry, Education, Educational facilities, Helicopters, Pilots, Rotorcraft, Schools, Students, Teachers.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61 and 141 of the Federal Aviation Regulations (14 CFR parts 61 and 141) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449; January 12, 1983].

2. Section 61.1 is amended by revising paragraph (b) to read as follows:

§ 61.1 Applicability.

(b) Except as provided in § 61.71, an applicant for a certificate or rating must meet the requirements of this part.

3. Section 61.31 is amended by redesignating paragraph (f) as paragraph (h), and adding new paragraphs (f) and (g) to read as follows:

§ 61.31 General limitations.

(f) *High altitude airplanes.* (1) Except as provided in paragraph (f)(2) of this section, no person may act as pilot in command of a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL unless that person has completed the ground and flight training specified in paragraphs (f)(1) (i) and (ii) of this section and has received a logbook or training record endorsement from an authorized instructor certifying satisfactory completion of the training. The training shall consist of:

(i) Ground training that includes instruction on high altitude aerodynamics and meteorology; respiration; effects, symptoms, and

causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; physical phenomena and incidents of decompression; and any other physiological aspects of high altitude flight; and

(ii) Flight training in an airplane, or in a simulator that meets the requirements of § 121.407 of this chapter, and which is representative of an airplane as described in paragraph (f)(1) of this section. This training shall include normal cruise flight operations while operating above 25,000 feet MSL; the proper emergency procedures for simulated rapid decompression without actually depressurizing the airplane; and emergency descent procedures;

(2) The training required in paragraph (f)(1) of this section is not required if a person can document accomplishment of any of the following in an airplane, or in a simulator that meets the requirements of § 121.407 of this section, and that is representative of an airplane described in paragraph (f)(1) of this section:

(i) Served as pilot in command prior to April 15, 1991;

(ii) Completed a pilot proficiency check for a pilot certificate or rating conducted by the FAA prior to April 15, 1991;

(iii) Completed an official pilot-in-command check by the military services of the United States; or

(iv) Completed a pilot-in-command proficiency check under parts 121, 125, or 135 conducted by the FAA or by an approved pilot check airman.

(g) *Tailwheel Airplanes.* No person may act as pilot in command of a tailwheel airplane unless that pilot has received flight instruction from an authorized flight instructor who has found the pilot competent to operate a tailwheel airplane and has made a one time endorsement so stating in the pilot's logbook. The endorsement must certify that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings unless the manufacturer has recommended against such landings, and go-around procedures. This endorsement is not required if a pilot has logged flight time as pilot in command of tailwheel airplanes prior to April 15, 1991.

4. Section 61.49 is revised to read as follows:

§ 61.49 Retesting after failure.

(a) An applicant for a written or practical test who fails that test may not apply for retesting until 30 days after the date the test was failed. However, in the case of a first failure, the applicant may apply for retesting before the 30 days have expired provided the applicant presents a logbook or training record endorsement from an authorized instructor who has given the applicant remedial instruction and finds the applicant competent to pass the test.

(b) An applicant for a flight instructor certificate with an airplane category rating, or for a flight instructor certificate with a glider category rating, who has failed the practical test due to deficiencies of knowledge or skill relating to stall awareness, spin entry, spins, or spin recovery techniques must, during the retest, satisfactorily demonstrate both knowledge and skill in these areas in an aircraft of the appropriate category that is certificated for spins.

5. Section 61.56 is amended by redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 61.56 Flight review.

(f) A person who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program, need not accomplish the flight review requirements of this section.

6. Section 61.58 is amended by revising paragraph (a) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember unless the proficiency checks or flight checks prescribed in paragraphs (b) and (c) of this section are satisfactorily completed.

7. Section 61.63 is amended by revising paragraph (d)(3)(i) and adding a new paragraph (d)(6) to read as follows:

§ 61.63 Additional aircraft ratings (other than airline transport pilot).

(d) * * *

(3) * * *

(i) The applicant must have met the requirements of this paragraph in a

multiengine airplane for which a type rating is required.

(6) On and after April 15, 1991, an applicant for a type rating to be added to a pilot certificate must—

(i) Have completed ground and flight training on the maneuvers and procedures of Appendix A of this part that is appropriate to the airplane for which a type rating is sought, and received an endorsement from an authorized instructor in the person's logbook or training records certifying satisfactory completion of the training; or

(ii) For a pilot employee of a part 121 or part 135 certificate holder, have completed the certificate holder's approved ground and flight training that is appropriate to the airplane for which a type rating is sought.

8. Section 61.71 is amended by removing the concluding flush text and by revising paragraph (b) to read as follows:

§ 61.71 Graduates of certificated pilot schools: Special rules.

(b) An applicant for a certificate or rating under this part is considered to meet the aeronautical knowledge and skill requirements, or both, applicable to that certificate or rating if the applicant applies within 90 days after graduation from an appropriate course given by a pilot school that is certificated under part 141 of this chapter and is authorized to test applicants on aeronautical knowledge or skill, or both.

9. Section 61.97 is amended by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 61.97 Aeronautical knowledge.

(f) Weight and balance computations; (g) Principles of aerodynamics, powerplants, and aircraft systems; and (h) Stall awareness, spin entry, spins, and spin recovery techniques.

10. Section 61.98 is amended by revising paragraph (a)(5) to read as follows:

§ 61.98 Flight proficiency.

(a) * * * (5) Flight at slow airspeeds with realistic distractions and the recognition of and recovery from stalls entered from straight flight and from turns;

11. Section 61.105 is amended by revising paragraphs (a)(4), (a)(5), (b)(3) and (b)(4), and adding paragraphs (a)(6) and (b)(5) to read as follows:

§ 61.105 Aeronautical knowledge.

(a) * * * (4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and radio communication procedures;

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate; and

(6) Stall awareness, spin entry, spins, and spin recovery techniques for airplanes.

(b) * * * (3) Recognition of weather situations of concern to the glider pilot, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and/or aerotow procedures as appropriate, signals, and safety precautions; and

(5) Stall awareness, spin entry, spins, and spin recovery techniques for gliders.

12. Section 61.107 is amended by revising paragraphs (a)(4) and (d)(5) to read as follows:

§ 61.107 Flight proficiency.

(a) * * * (4) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns;

(d) * * * (5) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns; and

13. Section 61.113 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c), and removing paragraphs (d) and (e) to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

(a) *Helicopter class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

(b) *Gyroplane class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

(c) An applicant who does not meet the night flying requirement in paragraph (a)(1)(ii) or (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or (b)(1)(ii) of this section, as appropriate.

14. Section 61.125 is amended by revising paragraphs (a)(2), (a)(3), (c)(3) and (c)(4), and adding paragraphs (a)(4) and (c)(5) to read as follows:

§ 61.125 Aeronautical knowledge.

(a) * * * (2) Basic aerodynamics and the principles of flight which apply to airplanes;

(3) Airplane operations, including the use of flaps, retractable landing gears, controllable propellers, high altitude operation with and without pressurization, loading and balance computations, and the significance and use of airplane performance speeds; and

(4) Stall awareness, spin entry, spins, and spin recovery techniques for airplanes.

(c) * * * (3) The recognition of weather situations of concern to the glider pilot from the ground and in flight, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and/or aerotow procedures as appropriate, signals, critical glider performance speeds, and safety precautions; and

(5) Stall awareness, spin entry, spins, and spin recovery techniques for gliders.

15. Section 61.127 is amended by revising paragraphs (a)(2) and (d)(4) to read as follows:

§ 61.127 Flight proficiency.

(a) * * * (2) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns;

(d) * * * (4) The correct use of the glider's performance speeds, flight at slow airspeeds with realistic distractions, and the recognition of and recovery from

stalls entered from straight flight and from turns; and

16. Section 61.131 is amended by revising paragraphs (a) introductory text and (b) introductory text, and removing paragraphs (c) and (d) to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

(a) *Helicopter class rating.* A total of 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

(b) *Gyroplane class rating.* A total of 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

17. Section 61.157 is amended by adding a new paragraph (f) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill.

(f) On and after April 15, 1991, an applicant for a type rating to be added to an airline transport pilot certificate, or for issuance of an airline transport pilot certificate in an airplane requiring a type rating, must—

(1) Have completed ground and flight training on the maneuvers and procedures of appendix A of this part that is appropriate to the airplane for which a type rating is sought and received an endorsement from an authorized instructor in the person's logbook or training records certifying satisfactory completion of the training; or

(2) For a pilot employee of a part 121 or part 135 certificate holder, have completed ground and flight training that is appropriate to the airplane for which a type rating is sought and is approved under parts 121 and 135.

18. Section 61.183 is amended by revising paragraph (e) to read as follows:

§ 61.183 Eligibility requirements: General.

(e) Pass a practical test on all items in which instruction is required by § 61.187 and, in the case of an applicant for a flight instructor-airplane or flight instructor-glider rating, present a logbook endorsement from an appropriately certificated and rated flight instructor who has provided the applicant with spin entry, spin, and spin recovery training in an aircraft of the appropriate category that is certificated

for spins, and has found that applicant competent and proficient in those training areas. Except in the case of a retest after a failure for the deficiencies stated in § 61.49(b), the person conducting the practical test may either accept the spin training logbook endorsement or require demonstration of the spin entry, spin, and spin recovery maneuver on the flight portion of the practical test.

19. Section 61.187 is amended by revising paragraph (a)(6) to read as follows:

§ 61.187 Flight proficiency.

(a) * * *

(6) Performance and analysis of standard flight training procedures and maneuvers appropriate to the flight instructor rating sought. For flight instructor-airplane and flight instructor-glider applicants, this shall include the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins.

20. Section 61.193 is revised to read as follows:

§ 61.193 Flight instructor authorizations.

(a) The holder of a flight instructor certificate is authorized, within the limitations of that person's flight instructor certificate and ratings, to give the—

(1) Flight instruction required by this part for a pilot certificate or rating;

(2) Ground instruction or a home study course required by this part for a pilot certificate and rating;

(3) Ground and flight instruction required by this subpart for a flight instructor certificate and rating, if that person meets the requirements prescribed in § 61.187(b);

(4) Flight instruction required for an initial solo or cross-country flight;

(5) Flight review required in § 61.56 in a manner acceptable to the Administrator;

(6) Instrument competency check required in § 61.57(e)(2);

(7) Pilot-in-command flight instruction required under § 61.101(d); and

(8) Ground and flight instruction required by this part for the issuance of the endorsements specified in paragraph (b) of this section.

(b) The holder of a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and rating, to endorse—

(1) In accordance with §§ 61.87(m) and 61.93 (c) and (d), the pilot certificate of a student pilot the flight instructor has

instructed authorizing the student to conduct solo or solo cross-country flights, or to act as pilot in command of an airship requiring more than one flight crew member;

(2) In accordance with §§ 61.87(m) and 61.93 (b) and (d), the logbook of a student pilot the flight instructor has instructed, authorizing single or repeated solo flights;

(3) In accordance with § 61.93(d), the logbook of a student pilot whose preparation and preflight planning for a solo cross-country flight the flight instructor has reviewed and found adequate for a safe flight under the conditions the flight instructor has listed in the logbook;

(4) In accordance with § 61.95, the logbook of a student pilot the flight instructor has instructed authorizing solo flights in a terminal control area or at an airport within a terminal control area;

(5) The logbook of a pilot or another flight instructor who has been trained by the person described in paragraph (b) of this section, certifying that the pilot or other flight instructor is prepared for an operating privilege, a written test, or practical test required by this part;

(6) In accordance with §§ 61.57(e)(2) and 61.101(d) the logbook of a pilot the flight instructor has instructed authorizing the pilot to act as pilot in command;

(7) [Reserved]; and

(8) In accordance with §§ 61.101 (g) and (h), the logbook of a recreational pilot the flight instructor has instructed authorizing solo flight.

21. Section 61.195 is amended by revising paragraph (b) to read as follows:

§ 61.195 Flight instructor limitations.

(b) *Ratings.* Flight instruction may not be conducted in any aircraft for which the flight instructor does not hold a category, class, and if appropriate, a type rating, on the flight instructor's pilot and flight instructor certificates.

22. Section 61.201 is amended by revising paragraph (a) to read as follows:

§ 61.201 Conversion to new system of flight instructor ratings.

(a) *General.* The holder of a flight instructor certificate that does not bear any of the new class or instrument ratings listed in § 61.5(c) (2), (3), or (4) for a flight instructor certificate, may not exercise the privileges of that certificate. The holder of a flight instructor certificate with a glider rating need not

convert that rating to a new class rating to exercise the privileges of that certificate and rating.

PART 141—PILOT SCHOOLS

23. The authority citation for part 141 is revised to read as follows:

Authority: Sections 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427), and section 6(c) of the Department of Transportation Act (49 U.S.C. app. 1655(c)).

24. Section 141.29 is removed and reserved.

§ 141.29 [Reserved]

25. Section 141.35 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3)(ii), (c) introductory text, (c)(1), (c)(4)(ii), (d) introductory text, (d)(1), (d)(3)(ii), and (e), and by removing paragraphs (b)(4), (c)(5), and (d)(4) to read as follows:

§ 141.35 Chief instructor qualifications.

(a) To be eligible for a designation as a chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate.

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter.

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation.

(4) Pass a flight test demonstrating satisfactory performance of and the ability to instruct on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, a chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

(3) ***

(ii) 1,000 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

(4) ***

(ii) 400 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

(3) ***

(ii) 1,500 flight hours.

(e) To be eligible for a designation as a chief instructor for a ground school course, a person must have 1 year of experience as a ground school instructor in a certificated pilot school.

26. Section 141.36 is added to read as follows:

§ 141.36 Assistant chief instructor qualifications.

(a) To be eligible for a designation as an assistant chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate.

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter.

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation.

(4) Pass a flight test on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, an assistant chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

(2) At least 500 hours as pilot in command;

(3) Primary flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 250 flight hours; or

(ii) 500 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

(2) At least 50 hours of flight time under actual or simulated instrument conditions;

(3) At least 500 hours as pilot in command;

(4) Instrument flight instructor experience, acquired as either a certificated instrument flight instructor or an instructor in a military pilot basic or instrument flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 125 flight hours; or

(ii) 200 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

(2) At least 1,000 hours as pilot in command;

(3) Flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary or basic flight training program or a combination thereof, consisting of at least—

(i) One and one half years and a total of 500 flight hours; or

(ii) 750 flight hours.

(e) To be eligible for a designation as an assistant chief instructor for a ground school course, a person must have one year of experience as a ground school instructor in a certificated pilot school.

27. Section 141.85 is amended by revising paragraph (b) to read as follows:

§ 141.85 Chief instructor responsibilities.

(b) The chief instructor or designated assistant chief instructor shall be available at the pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training.

28. Section 141.91 is amended by revising paragraphs (a) and (c) to read as follows:

§ 141.91 Satellite bases.

(a) An assistant chief instructor is designated for each satellite base, and that assistant chief instructor shall be available at the satellite pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training:

(c) The instructors are under the direct supervision of the chief flight instructor or assistant chief flight instructor for the appropriate training course, who is readily available for consultation in accordance with § 141.85(b); and

29. Part 141, appendix A is amended by adding new paragraphs (2)(e) and by

revising paragraph (3)(c)(4) to read as follows:

Appendix A—Private Pilot Certification Course (Airplanes)

(e) Stall awareness, spin entry, spins, and spin recovery techniques.

(4) Flight at slow airspeeds with realistic distractions, recognition of and recovery from stalls entered from straight flight and from turns.

30. Part 141, appendix F is amended by redesignating and revising paragraph (F)(IV) as paragraph (F)(IV)(a) and adding a new paragraph (F)(IV)(b) to read as follows:

Appendix F—Rotorcraft, Gliders, Lighter-Than-Air Aircraft and Aircraft Rating Courses

IV. Aircraft type rating.

(a) An aircraft type rating course must include at least 10 hours of ground training on the aircraft systems, performance, operation, and loading. In addition, it must include at least 10 hours of flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(1) may be credited for not more than 5 of the 10 hours of required flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(2) may be credited for not more than 2.5 of the 10 hours of required flight instruction.

(b) For airplanes that require type ratings, the aircraft type rating course must include ground and flight training on the maneuvers and procedures of part 61, appendix A that is appropriate to the airplane for which a type rating is sought.

31. Part 141, appendix H is amended by revising paragraphs 3(a)(2)(i) and

4(a)(2)(i), and by adding a new paragraph 6(a)(3) to read as follows:

Appendix H—Test Preparation Courses

(i) 10 hours of flight instruction in the analysis and performance of flight training maneuvers, which for students enrolled in a flight instructor airplane certification course and a flight instructor glider certification course includes the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins; and

(i) 10 hours, or 10 flights in a glider in the case of a glider instructor rating course, performing analysis of flight training maneuvers, which in the case of an airplane instructor rating course and a glider instructor rating course includes the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins; and

(3) In airplanes that require type ratings, the course must include ground and flight training on the maneuvers and procedures of Part 61, Appendix A that are appropriate to the airplane for which a type rating is sought.

Issued in Washington, DC, on March 7, 1991.

James B. Busey,
Administrator.

[FR Doc. 91-6070 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-13-M

Great Lakes Federal Register

Friday
March 15, 1991

Part III

Department of Transportation

Coast Guard

Joint United States and Canadian Voluntary Guidelines for Control of Ballast-Water Discharges from Ships in the Great Lakes; Notice

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-011]

Joint United States and Canadian Voluntary Guidelines for Control of Ballast-Water Discharges from Ships in the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of adoption of joint voluntary guidelines.

SUMMARY: The United States Coast Guard and Canadian Coast Guard are issuing joint voluntary guidelines for ships discharging ballast water into the Great Lakes. These guidelines are needed to protect the Great Lakes from non-native fish and other aquatic organisms that may be detrimental to the balance of nature that now exists. These guidelines should reduce the probability of introducing additional non-native species.

EFFECTIVE DATE: These guidelines are effective March 15, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) (CGD 91-011), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LT James H. McDowell, Project Manager, Port Safety and Security Division (G-MPS), (202) 267-0491.

SUPPLEMENTARY INFORMATION:**The Problem**

The Canadian Coast Guard and U.S. Coast Guard are issuing joint voluntary guidelines intended to protect the Great Lakes from the accidental introduction of non-native fish and other aquatic organisms through the discharge of ships' ballast water. Newly introduced organisms alter the balance of an ecosystem, often to the detriment of the system.

Historical records suggest that over 100 non-native species have been introduced into the Great Lakes. The primary medium for the introduction of these non-native species is believed to be ships' ballast water. In the 1980s alone, ballast-water discharges are believed to have been responsible for the introduction of four nuisance species to the Great Lakes: the zebra mussel (*Dreissena polymorpha*); the European ruffe (*Gymnocephalus cernus*); the spiny water-flea (*Bythotrephes cederstroemi*);

and the tube-nosed goby (*Proterorhinus marmoratus*).

Many ships take on water as ballast in foreign harbors or in the nearshore waters. These waters are often rich in living organisms. When these ships arrive in the Great Lakes to take on cargo, they discharge ballast water. Any organisms contained in the water then enter the Great Lakes. Many of these transplanted species do not survive in this new environment. However, those that do survive quickly adapt and in some instances thrive in their new environment, particularly where there are no natural predators to control their population growth. This uncontrolled population growth can be detrimental to a delicately balanced ecosystem.

The zebra mussel (*D. polymorpha*) provides a good example of the harmful effects of a newly introduced species. In June 1988 this small bivalve mollusk, native to the Black, Azov, and Caspian Seas in the southern U.S.S.R., was discovered on the Canadian side of Lake St. Clair in the Great Lakes. In July of that year it was discovered on the U.S. side in the western basin of Lake Erie. Scientists believe that it was introduced in 1986 in its pre-adult planktonic phase by the discharge of fresh-water ballast of ships from northern Europe, where it has spread over the last century.

The zebra mussel is a major fouling pest-species: hundreds of millions can be found on and in pipes, screens, conduits, boat bottoms, floats, buoys, rocks, submerged objects, and native animals and plants. As a filter-feeding organism, it removes vast quantities of microscopic organisms from the water, the same organisms that fish larvae and young fish rely upon for their food supply. It also completely covers rocks and other substrates normally used by Great Lakes fish for laying eggs.

Since its introduction into the Great Lakes, the zebra mussel has reproduced and spread to each of the Great Lakes, the Saint Lawrence River, and the Erie Canal. It now affects intakes to municipal water-filtration and electric-power plants in Michigan, Ohio, and New York. The economic impact on communities affected by its introduction into the Great Lakes may reach \$5 billion by the year 2000. Presently there are no known predators in North America to control its spread. Natural range expansion and secondary transfer media will likely lead to its establishment in all connecting waters of the Great Lakes and eventually in many other North American rivers and lakes.

Solutions

Currently, the most practical method of protecting the Great Lakes from foreign organisms that may exist in ballast water appears to be an exchange of ballast water in the open ocean, beyond the continental shelf. Water in the open ocean contains fewer organisms than water collected in harbors or coastal waters. Those organisms that exist in the open ocean are adapted to relatively constant conditions, such as salinity and temperature, and are less likely to survive if accidentally introduced into a freshwater system.

Other possible methods of ballast control include: discharging ballast water to reception facilities ashore, heating or chemically treating ballast water, disinfecting ballast water with ultraviolet light, depriving ballast water of oxygen, coating tanks with biocides, installing filters, and modifying ship design. However, there is a lack of research and practical experience on the cost, safety, effectiveness, and environmental acceptability of these methods.

International Recognition

The introduction and spread of nonindigenous species by ships' ballast water has been brought to the attention of the International Maritime Organization (IMO). IMO, the United Nation's specialized agency for maritime affairs, has recognized this issue as an international problem, which requires an international solution. Most recently, in November 1990, the Marine Environment Protection Committee (MEPC) of IMO formed a working group to consider research information and solutions proposed by member states of IMO and by nongovernmental organizations in developing an international approach to resolving this problem. The working group concluded that the establishment of voluntary guidelines was an appropriate first step in addressing this problem. The group reviewed and modified a draft resolution and guidelines submitted by the Canadian delegation. The group recommended that the draft resolution and guidelines be considered by member states with a view toward adoption at the next session of MEPC, in July 1991.

The draft guidelines of MEPC recognize that the range of possible control options should be limited to: retention of ballast water, exchange of ballast water at sea, control of sediment uptake, and discharge of ballast water to reception facilities ashore. The draft

guidelines acknowledge that other options exist but that further research is needed before they could be recommended.

The Canadian Voluntary Guidelines

In May 1989 the Canadian Coast Guard introduced the first voluntary guidelines for controlling ballast-water discharges into the Great Lakes. The Canadian Coast Guard developed these guidelines in full consultation with the U.S. Coast Guard, the Great Lakes Fishery Commission, and representatives of commercial shipping. These guidelines encouraged all ships transiting the Eastern Canadian Vessel Traffic Service (ECAREG VTS) Zone inbound for the Saint Lawrence Seaway and the Great Lakes to exchange fresh-water ballast collected in foreign harbors or near coastal waters for salt-water ballast collected from the open ocean. This exchange was to occur far enough from any coastline that there would be few organisms of any kind in the new ballast water, which would eventually be discharged into the Great Lakes.

U.S. Legislation

On November 29, 1990, the U.S. enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Public Law 101-646), (the Act). The Act requires the U.S. Coast Guard to issue voluntary guidelines, to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ships' ballast water, not later than six months after enactment and to issue corresponding regulations within 24 months of enactment. The U.S. Coast Guard is to develop these guidelines and regulations in consultation with the government of Canada.

Joint U.S. and Canadian Voluntary Guidelines

In keeping with the Great Lakes Water Quality Agreement, the Canadian Coast Guard and the U.S. Coast Guard have agreed to issue joint voluntary guidelines for controlling the discharge of ships' ballast water, to reduce the probability of introducing additional non-native species into the Great Lakes. These guidelines, which are the subject of this document, are based on the original Canadian guidelines.

Regulatory Evaluation

This Notice contains guidelines only, so the U.S. Coast Guard has not performed a Regulatory Evaluation. The Coast Guard does not anticipate that the rulemaking it will develop, discussed under U.S. Legislation, will be either

major under Executive Order 12291 or significant under the U.S. Department of Transportation Regulatory Policies and procedures (44 FR 11040; February 26, 1978). The Coast Guard does not have accurate information on the economic impact of these guidelines, but expects this impact to be minimal. The Coast Guard will accept comments on this impact, and will consider them when performing the Regulatory Evaluation in support of that rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Again, however, this Notice contains guidelines only, so the U.S. Coast Guard has not performed a Regulatory Flexibility Analysis. The Coast Guard does not have accurate information on how many ships qualify as small entities, but recognizes that even ships that do qualify should, if these guidelines apply to them, comply with these guidelines. The Coast Guard will accept comments on the economic impact on small entities, and will consider them when developing the rulemaking discussed under U.S. Legislation and when performing the Regulatory Evaluation discussed under Regulatory Evaluation.

Collection of Information

These voluntary guidelines do not impose any new or additional reporting or recordkeeping requirements on the public. The reporting procedures outlined in this document are a continuation of the existing procedures specified in the voluntary guidelines previously issued by the Canadian Coast Guard.

Under the existing procedures, each ship entering the ECAREG VTS Zone is requested to provide information regarding ballast water as part of the ECAREG interrogative. The ship's master is also requested to complete a Ballast Water Exchange Report Form (appendix A). The pilot boarding at Les Escoumins will provide a copy of the guidelines, unless one is already on board. The Lockmaster at Saint Lambert Lock will collect the completed report, and the Canadian Coast Guard will use it to verify the information previously reported to ECAREG and to monitor the

compliance with the effectiveness of these guidelines.

Federalism

The U.S. Coast Guard has analyzed both these guidelines and the rulemaking it will develop, discussed under U.S. Legislation, in accordance with the principles and criteria contained in Executive Order 12612, and has determined that neither have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The U.S. Coast Guard does not have accurate information on the impact these guidelines will have on the environment. They should reduce the probability of introducing or spreading nonindigenous species in the Great Lakes. This should have a positive but no negative impact on the environment. The Coast Guard will prepare an Environmental Assessment in support of the proposed rulemaking as discussed under U.S. Legislation. The Coast Guard will accept comments on the environmental impact of these guidelines, and will consider them in developing the Environmental assessment.

In consideration of the foregoing, the Canadian Coast Guard and U.S. Coast Guard are issuing the following:

Voluntary Guidelines for Control of Ballast Water in the Great Lakes

1. Applicability

These Voluntary Guidelines for Control of Ballast Water in the Great Lakes apply to each ship that carries ballast water and that, after operating on the high seas, is inbound for the Saint Lawrence River, for any ports on the River upstream of Quebec City, for the Great Lakes, or for any ports on the Great Lakes.

2. Definitions

As used in these guidelines—

Aquatic nuisance species means a nonindigenous species that threatens the diversity or abundance of native species, the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters;

Ballast water means any water and associated sediments used to manipulate the draft, trim, or stability of a ship;

ECAREG means the Eastern Canada Vessel Traffic Service;

Environmentally sound methods, efforts, actions, or programs means

methods, efforts, actions, or programs, either to prevent introductions or to control infestations of aquatic nuisance species, that minimize adverse impacts to the structure and function of an ecosystem and minimize adverse effects on non-target organisms and ecosystems and that emphasize integrated pest-management techniques and nonchemical measures;

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels; and

Nonindigenous species means any species or other viable biological material that enters an ecosystem beyond its historical range, including any such organisms transmitted from one country to another.

3. Ballast-Water Management

(a) The master of each ship to which these guidelines apply should take appropriate action to ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes. This action may include, but is not limited to:

(i) The exchange of any ballast water not taken on in ocean depths greater than 2,000 meters. The exchange should occur at sea, as far from land as

practicable, in an ocean depth of not less than 2,000 meters; and

(ii) The use of alternative environmentally sound methods of managing ballast water that are as effective as high-seas exchange in preventing and controlling infestations of aquatic nuisance species.

(b) In exceptional circumstances, where it may be impracticable to conduct the ballast-water exchange as recommended in paragraph (a), and for any ship that has not left the North American continental shelf on its inbound voyage, the exchange may occur in internal Canadian waters, within the Laurentian Channel and in water depths exceeding 300 meters. Any such exchange in internal waters should be restricted to the area between 61° and 63° west longitude.

(c) When a ship is pumping out ballast water, preparatory to an exchange in accordance with paragraph (a) or (b) of these guidelines, the pump should run until it loses suction, thus assuring that the tank is as empty as practicable before taking on new ballast water.

(d) Sediment from the ballast-water tanks of each ship arriving from a foreign port should be disposed of that a disposal site ashore in accordance with any applicable requirements.

(e) These guidelines do not relieve the master of her or his responsibility for ensuring the safety and stability of the ship or the safety of the crew and passengers, or of any other such responsibility.

(f) The discharge of oil, noxious liquid substances (NLSs), or polluting

substances into the navigable waters of the United States or into any waters under Canadian jurisdiction is prohibited by U.S. and Canadian regulations. Ballast water carried in any tank containing a residue of oil, and NLS, or any other polluting substance must be discharged in accordance with the applicable regulations.

4. Compliance Monitoring

(a) Each ship subject to these guidelines is requested to provide ECAREG with the following information, as part of the ECAREG interrogative:

(i) Whether ballast water is being carried; and

(ii) The minimum ocean depth and the location where the ballast water was taken on or exchanged.

(b) The salinity of the ballast water to be discharged in the Great Lakes and the location, date, and time of the ballast-water exchange should be entered in the ship's log book, or in other suitable documentation.

(c) The ship's master is requested to carefully complete a Ballast-Water Exchange Report Form, and give it to the Lockmaster at the Saint Lambert Lock.

(d) Officials of Canada or the U.S. may also take samples of ballast water to assess the compliance with and the effectiveness of the guidelines.

Dated: March 11, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

BILLING CODE 4910-14-M

APPENDIX 'A' / ANNEXE 'A'

BALLAST WATER EXCHANGE REPORT/RAPPORT DE CHANGEMENT DE LEST LIQUIDE

(To be completed by the Ship's Master and given to the Lockmaster prior to ship clearing St. Lambert Lock)
(A remplir par le capitaine de navire et à remettre au maître éclusier avant que le navire ne quitte l'écluse de St-Lambert)

| | | | | | |
|--|--|---|--|--|--|
| NAME OF SHIP: NOM DU NAVIRE : _____ | | PORT OF REGISTRY: PORT D'IMMATRICULATION : _____ | | OFFICIAL NO. OR CALL SIGN: NO OFFICIEL OU INDICATIF D'APPEL : _____ | |
| OWNERS: ARMATEURS : _____ | | AGENTS: AGENTS : _____ | | | |

| INFORMATION ON BALLAST WATER BEING CARRIED INTO THE GREAT LAKES/RENSEIGNEMENTS CONCERNANT LE LEST LIQUIDE TRANSPORTÉ DANS LES GRANDS LACS | | | | | | | | |
|---|--|--------------------------------------|-------|--|--|--|---|--|
| LOCATION EMPLACEMENT | QUANTITY (TONNES) QUANTITÉ (TONNES) | WHERE TAKEN ON LIEU DU CHARGEMENT | | SALINITY (specify units) SALINITÉ (précisez unités) | INTENDED DISCHARGE PORT PORT PRÉVU POUR LE DÉCHARGEMENT | IF EXCHANGED, WHERE WAS ORIGINAL BALLAST TAKEN ON SI CHANGÉ, LIEU DU PREMIER CHARGEMENT | SALINITY OF ORIGINAL BALLAST SALINITÉ DU LEST ORIGINAL | CONTROLS USED WHERE BALLAST NOT EXCHANGED CONTRÔLES MIS EN VIGUEUR LORSQUE LE LEST N'EST PAS ÉCHANGÉ |
| | | LAT. | LONG. | | | | | |
| DOUBLE BOTTOMS DOUBLE FOND | | | | | | | | |
| FORE PEAK BALLAST AVANT | | | | | | | | |
| AFT PEAK BALLAST ARRIÈRE | | | | | | | | |
| SIDE TANKS BALLASTS LATÉRAUX | | | | | | | | |
| DEEP TANKS CALES À EAU | | | | | | | | |
| CARGO HOLDS/CALES À MARCHANDISES | | | | | | | | |
| OTHER (Specify) AUTRE (Spécifiez) | | | | | | | | |

| | |
|--|--|
| MASTER'S NAME (Please print) NOM DU CAPITAINE (Lettres moulées) | MASTER'S SIGNATURE SIGNATURE DU CAPITAINE |
| DATE | LOCATION EMPLACEMENT |

| | | | |
|--|--|------------|-----------|
| FOR COMPLETION BY ST. LAURENCE SEAWAY INSPECTOR: A REMPLIR PAR L'INSPECTEUR DE LA VOIE MARITIME DU ST-LAURENT : | WAS BALLAST WATER SAMPLE TAKEN? A-T-ON PRÉLEVÉ UN ÉCHANTILLON DE LEST LIQUIDE ? | Yes Oui | No Non |
|--|--|------------|-----------|

One copy to be given to the Lockmaster, one copy to be retained on board during voyage in the Great Lakes/St. Lawrence Seaway.
Remettre une copie à l'éclusier, conserver une copie à bord du navire pendant le voyage sur les Grands Lacs et dans la Voie maritime du Saint-Laurent.

Get your Part 20

Friday
March 15, 1991

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Migratory Bird Hunting Regulations Proposals for Certain Federal Indian Reservations and Ceded Lands for the 1991-1992 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB60

Migratory Bird Hunting: Migratory Bird Hunting Regulations Proposals for Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Season**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for 1991-92 hunting season.**SUMMARY:** The principal purpose of this Notice of Intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1991-92 hunting season, under the interim guidelines implemented for this purpose in September 1985. An additional purpose is to provide notification that the rulemaking procedure will be modified to allow greater detail to be incorporated into the final regulations. Proposals must include the details described later in this document. The U.S. Fish and Wildlife Service (Service) also welcomes comments concerning this Notice of Intent.**DATES:** Proposals and comments should be submitted as soon as possible and must be received by June 7, 1991.**ADDRESSES:** All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240. A copy of the proposal should be sent to the appropriate Service Regional office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).**FOR FURTHER INFORMATION CONTACT:** Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240, Telephone: 703/358-1773.**SUPPLEMENTARY INFORMATION:****Background**

Beginning with the 1985-86 hunting season, the Service has employed interim guidelines described in the June 4, 1985 *Federal Register* (50 FR 23467) to

establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting

regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Since the 1987-88 hunting season, the Service has reached annual agreement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their lands in Minnesota. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1991-92 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

In this coming season, for the first time, the final hunting regulations that will be established for Indian tribes will have separate rulemakings for early and late seasons. A primary purpose for publishing rulemakings in the *Federal Register* is to inform, as fully as possible, the affected entities and the general public of actions regulatory agencies propose and ultimately take. To fully meet regulatory agency legal responsibilities and inform, the

rulemakings should contain an appropriate level of relevant detail. In the past, in these regulations, little detail has been included with only, in many instances, references to unfinalized State regulations and final Federal frameworks. Thus, the Service is modifying the tribal regulations procedure somewhat in an attempt to allow the final regulations to better stand-alone and, thus, provide greater clarity of requirement with regard to season dates, season lengths, and bag/possession limits. In those few instances where a waterfowl season begins in the early season, it may still be necessary to describe the regulations generally, as in past years, in relation to unpublished final frameworks.

However, as in previous years, only a single proposed rule will be published that will include both early and late seasons. For the purposes of these regulations, an early season is one that begins before October 1 and a late season is one that begins on October 1 or later. Although only a rough distinction, early seasons usually focus on nonwaterfowl species, i.e., doves, pigeons, etc., and late seasons usually focus on waterfowl. The Service is setting a target date for publishing the

proposed rulemaking, containing tribal proposals, of July 19, 1991, with final rules for early and late seasons of about August 23 and September 20, 1991, respectively.

The Service notes that duck hunting regulations for recent hunting seasons have been more restrictive because of the serious decline in duck populations caused by a lengthy period of drought in the prairie region of Canada and the United States. The drought was especially severe in 1988 and 1989, and several years of favorable environmental conditions probably will be required before ducks will be able to reproduce successfully again in many prairie areas. In 1991, the Service will continue to monitor closely the status of duck populations and Indian tribes should consider the current situation when developing their hunting season proposals.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the

same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

The Service notes also that because of a long-term decline of mourning doves in the Western Management Unit, the recent hunting regulations for States in the unit were more restrictive than usual. Similar regulations likely will be established in the unit for this species for the 1991-92 hunting season, with the aim of increasing the size of the population.

Pertinent details in the proposal received from tribes will be published for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1991-92 hunting season should submit their proposals as soon as possible, but no later than June 7, 1991. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

Fish and Wildlife Service Regional Offices

ADDRESS REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

| States | Address | Telephone No. |
|---|--|---------------|
| California, Hawaii, Idaho, Nevada, Oregon, Washington..... | 911 NE 11th Ave., Portland, OR 97232-4181..... | 503/231-6118 |
| Arizona, New Mexico, Oklahoma, Texas..... | P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103..... | 505/766-2321 |
| Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin..... | Fed. Bldg., Ft. Snelling, Twin Cities, MN 55111..... | 612/725-3563 |
| Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee..... | Richard B. Russell Fed. Bldg. Room 1200, 75 Spring St. SW., Atlanta, GA 30303..... | 404/331-3588 |
| Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia..... | One Gateway Center, Suite 700, Newton Corner, MA 02158..... | 617/965-5100 |
| Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming..... | P.O. Box 25486, Denver Federal Center, Denver, CO 80225..... | 303/236-7920 |
| Alaska..... | 1011 E. Tudor Road, Anchorage, AK 99503..... | 907/786-3542 |

Authorship

The primary author of this Notice of Intent is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually may be promulgated for the 1991-92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918

(40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Date: February 19, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-6241 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-55-M

The American Medical Association is a national organization of physicians and surgeons, organized for the purpose of promoting the science and art of medicine, and of securing the highest standards of medical education and practice. It is the largest and most influential of the medical organizations in the United States, and its members are the leading authorities in their respective fields. The Association is composed of more than 40,000 members, who are organized into local, state, and national societies. The Association's primary concern is the advancement of the medical profession, and it accomplishes this through its various departments and committees. These include the Department of Education, which is responsible for the improvement of medical education; the Department of Legislation, which deals with matters relating to the medical profession's legal status; and the Department of Public Health, which is concerned with the promotion of public health and the prevention of disease. The Association also publishes a number of journals and books, and it holds annual meetings where members can discuss the latest developments in medicine.

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THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

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Estimated Federal Budget

Friday
March 15, 1991

Part V

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Cumulative Report on Rescissions and
Deferrals**

March 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of March 1, 1991, of 26 rescission proposals and ten deferrals contained in three special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991 and February 28, 1991.

**Rescissions (Table A and Attachment
A)**

As of March 1, 1991, 26 rescission proposals totaling \$4,309.9 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1991, \$7,129.4 million in budget authority was being deferred

from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information from Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990

56 FR 1704, Wednesday, January 16,

1991

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A
STATUS OF FY 1991 RESCISSIONS

| | Amounts (In millions of dollars) |
|--|--|
| Rescissions proposed by the President..... | 4,309.9 |
| Accepted by the Congress..... | 0 |
| Funding made available..... | 0 |
| Funding never withheld..... | 0 |
| | <hr/> |
| Pending before the Congress..... | 4,309.9 |

TABLE B
STATUS OF FY 1991 DEFERRALS

| | Amounts (In millions of dollars) |
|---|--|
| Deferrals proposed by the President..... | 9,342.6 |
| Routine Executive releases through March 1, 1991... | -2,213.2 |
| Overtaken by the Congress..... | 0 |
| | <hr/> |
| Currently before the Congress..... | 7,129.4 |

Attachments

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

| As of March 1, 1991 Agency/Bureau/Account | Rescission Number | Amount | | Date of Message | Amount Rescinded | Amount Made Available | | Date Made Available | Congressional Action |
|--|----------------------|---|---------------------------------|--------------------|---------------------|-----------------------------|--|---------------------------|-------------------------|
| | | Previously Considered by Congress | Currently before Congress | | | | | | |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Soil Conservation Service | | | | | | | | | |
| Watershed and flood prevention operations..... | R91-1 | | 10,000 | 02-28-91 | | | | | |
| DEPARTMENT OF DEFENSE | | | | | | | | | |
| PROCUREMENT | | | | | | | | | |
| Procurement of weapons and tracked combat vehicles, Army..... | R91-2 | | 86,000 | 02-28-91 | | | | | |
| Procurement of ammunition, Army..... | R91-3 | | 13,000 | 02-28-91 | | | | | |
| Aircraft procurement, Navy..... | R91-4 | | 1,093,500 | 02-28-91 | | | | | |
| Weapons procurement, Navy..... | R91-5 | | 2,600 | 02-28-91 | | | | | |
| Shipbuilding and conversion, Navy..... | R91-6 | | 405,000 | 02-28-91 | | | | | |
| Other procurement, Navy..... | R91-7 | | 10,000 | 02-28-91 | | | | | |
| Procurement, Marine Corps..... | R91-8 | | 2,000 | 02-28-91 | | | | | |
| Aircraft procurement, Air Force..... | R91-9 | | 14,200 | 02-28-91 | | | | | |
| Missile procurement, Air Force..... | R91-10 | | 74,700 | 02-28-91 | | | | | |
| Other procurement, Air Force..... | R91-11 | | 254,200 | 02-28-91 | | | | | |
| Procurement, Defense Agencies..... | R91-12 | | 65,303 | 02-28-91 | | | | | |
| National guard and reserve equipment..... | R91-13 | | 289,900 | 02-28-91 | | | | | |
| RESEARCH, DEVELOPMENT, TEST, AND EVALUATION | | | | | | | | | |
| Research, development, test and evaluation, Army..... | R91-14 | | 60,800 | 02-28-91 | | | | | |
| Research, development, test and evaluation, Navy..... | R91-15 | | 834,500 | 02-28-91 | | | | | |

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

| As of March 1, 1991 Agency/Bureau/Account | Rescission Number | Amount | | Date Made Available | Congressional Action |
|--|----------------------|---|---------------------------------|---------------------------|-------------------------|
| | | Previously Considered by Congress | Currently before Congress | | |
| Research, development, test and evaluation, Air Force..... | R91-16 | | 134,100 | 02-28-91 | |
| Research, development, test and evaluation, Defense Agencies..... | R91-17 | | 29,300 | 02-28-91 | |
| MILITARY CONSTRUCTION | | | | | |
| Military construction, Navy..... | R91-18 | | 48,962 | 02-28-91 | |
| Military construction, Air Force..... | R91-19 | | 91,800 | 02-28-91 | |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | |
| HOUSING PROGRAMS | | | | | |
| Annual contributions for assisted housing.. | R91-20 | | 500,000 | 02-28-91 | |
| Congregate services..... | R91-21 | | 9,500 | 02-28-91 | |
| Nehemiah housing opportunity fund..... | R91-22 | | 39,112 | 02-28-91 | |
| COMMUNITY PLANNING AND DEVELOPMENT | | | | | |
| Urban development action grants..... | R91-23 | | 13,518 | 02-28-91 | |
| Rental rehabilitation grants..... | R91-24 | | 70,000 | 02-28-91 | |
| Urban homesteading..... | R91-25 | | 13,397 | 02-28-91 | |
| Rehabilitation loan fund..... | R91-26 | | 144,459 | 02-28-91 | |
| TOTAL, RESCISSIONS PROPOSED..... | | | 4,309,851 | | |

ATTACHMENT B
Status of FY 1991 Deferrals - As of March 1, 1991
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted | | Date of Message | Releases(-) | | Amount Deferred as of 03-1-91 |
|---|-----------------|---------------------|-----------------------|-----------------|------------------------|--|-------------------------------|
| | | Original Request | Subsequent Change (+) | | Cumulative OMB/ Agency | Congress- sionally Required Congressional Action | |
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | |
| International Security Assistance Economic support fund..... | D91-1 | 149,319 | | 10-04-90 | | | |
| | D91-1A | | 1,943,510 | 01-09-91 | | | |
| | D91-1B | | 830 | 02-28-91 | 405,937 | | 1,687,723 |
| Foreign military financing..... Peacekeeping operations..... | D91-8 | 4,820,649 | | 01-09-91 | 1,795,195 | | 3,025,454 |
| | D91-9 | 5,177 | | 01-09-91 | | | 5,177 |
| DEPARTMENT OF AGRICULTURE | | | | | | | |
| Forest Service Expenses, brush disposal..... Cooperative work..... Timber salvage sales..... | D91-2 | 135,955 | | 10-04-90 | | | 135,955 |
| | D91-3 | 273,468 | | 10-04-90 | | | |
| | D91-3A | | 235,572 | 01-09-91 | | | 509,040 |
| | D91-10 | 103,684 | | 02-28-91 | | | 103,684 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | |
| Wildlife Conservation, Military Reservations Wildlife conservation, Defense..... | D91-4 | 1,186 | | 10-04-90 | | | 1,186 |

ATTACHMENT B
Status of FY 1991 Deferrals - As of March 1, 1991
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted | | Date of Message | Releases(-) | | Amount Deferred as of 03-1-91 |
|--|-----------------|---------------------|-----------------------|----------------------|-----------------------|-------------------------------|-------------------------------|
| | | Original Request | Subsequent Change (+) | | Cumulative OMB/Agency | Congressional Required Action | |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | D91-5 | 7,127 | | 10-04-90 | | | 7,127 |
| | | | | | | | |
| Social Security Administration | | | | | | | |
| Limitation on administrative expenses (construction)..... | | | | | | | |
| DEPARTMENT OF STATE | D91-6 D91-6A | 14,529 | 44,507 | 10-04-90 01-09-91 | 12,098 | | 46,938 |
| | | | | | | | |
| Bureau for Refugee Programs | | | | | | | |
| United States emergency refugee and migration assistance fund, executive.... | | | | | | | |
| DEPARTMENT OF TRANSPORTATION | D91-7 D91-7A | 538,659 | 1,068,473 | 10-04-90 01-09-91 | | | 1,607,132 |
| | | | | | | | |
| Federal Aviation Administration | | | | | | | |
| Facilities and equipment (Airport and airway trust fund)..... | | | | | | | |
| TOTAL, DEFERRALS..... | | 6,049,754 | 3,292,892 | | 2,213,230 | 0 | 7,129,416 |

[FR Doc. 91-6285 Filed 3-14-91; 8:45 am]
 BILLING CODE 3110-01-C

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Vol. 56, No. 51

Friday, March 15, 1991

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S. 379/Pub. L. 102-10

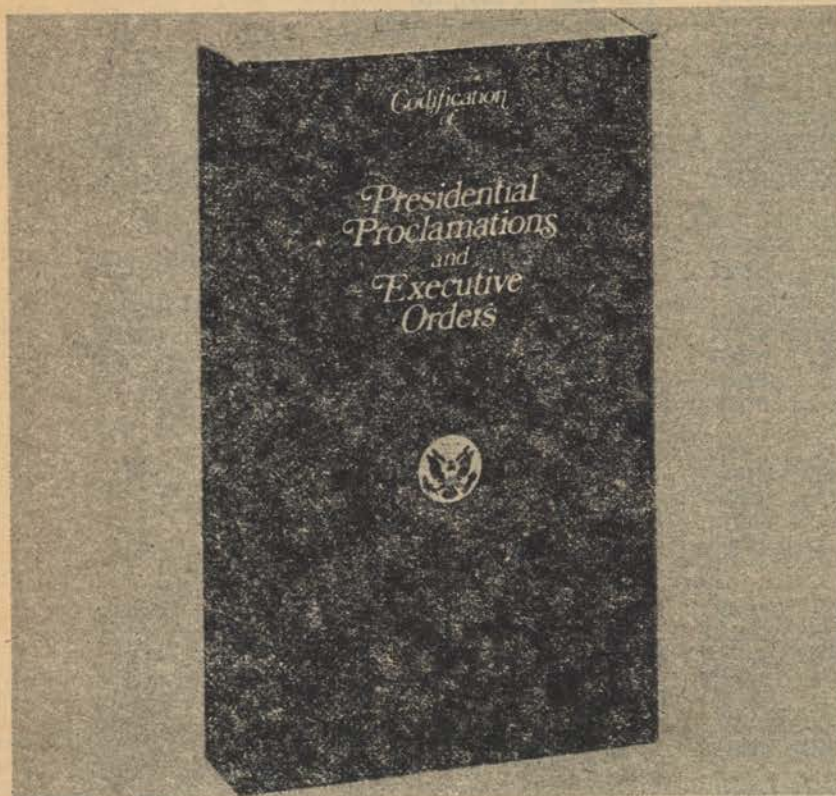
National and Community Service Technical Amendments Act of 1991. (Mar. 12, 1991; 105 Stat. 29; 4 pages) Price: \$1.00

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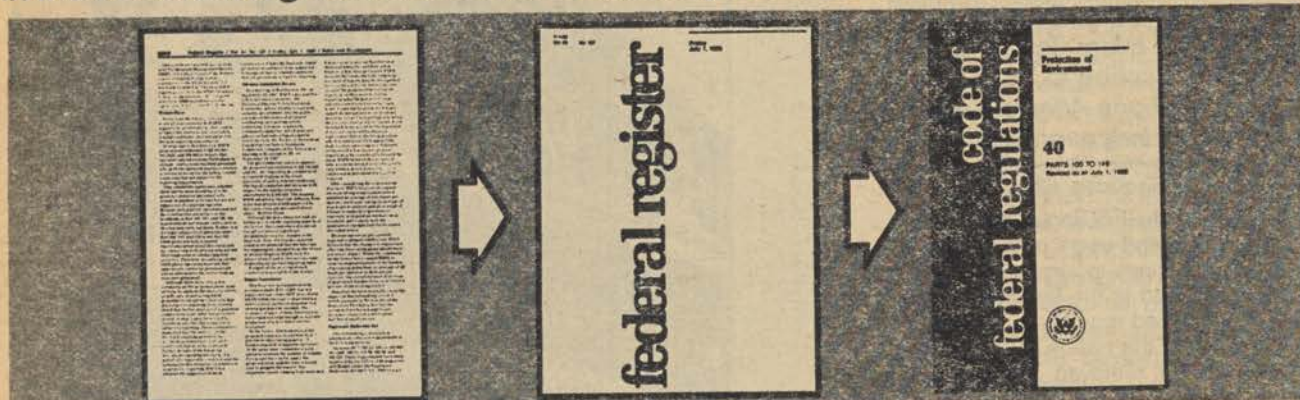
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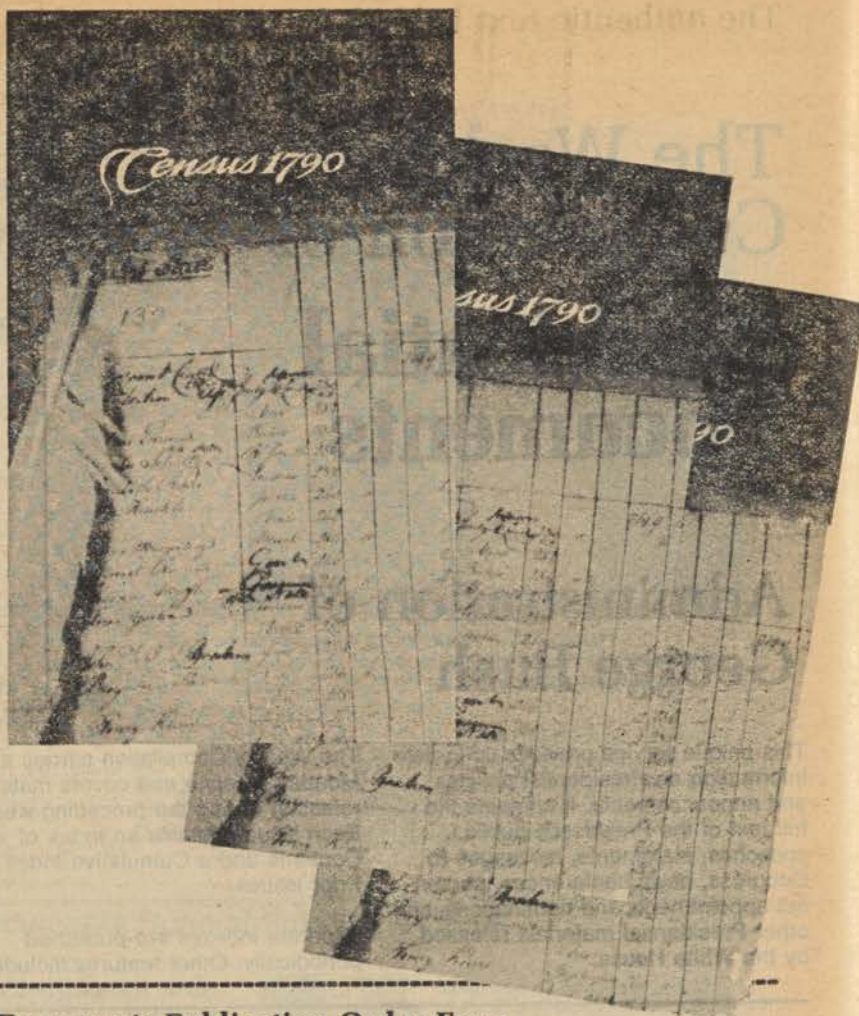
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